



WHERE IS THE MONEY?

**Taxation and the state of Africa Mining
Vision implementation in Ghana (ECOWAS),
Tanzania (EAC) and Zambia (SADC)**

A SYNTHESIS REPORT

Acknowledgements

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Taxation and the state of Africa Mining Vision implementation in Ghana (ECOWAS), Tanzania (EAC) and Zambia (SADC).

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This publication was completed under the supervision of Cephass Makunike. It also benefited from comments from Alvin

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This publication was made possible through the financial support of Oxfam IBIS. However the views expressed herein do not necessarily reflect their official policy positions.

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Our vision is ***'A new Africa where tax justice prevails to contribute to an equitable, inclusive and sustainable development'***

In line with our mandate, TJN-A's mission is ***'To spearhead tax justice in Africa's development by enabling citizens and institutions to promote***

equitable tax systems through research, capacity building, and policy influencing'

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Design and printing
InCA Africa, Nairobi, Kenya

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List of Acronyms

AG	Auditor General
AMDC	Africa Minerals Development Centre
AMV	Africa Mining Vision
AU	African Union
BITs	Bilateral Investment Treaties
CEPS	Customs and Excise Preventive Service
CMV	Country Mining Vision
DTA	Double Taxation Agreement
EAC	East African Community
ECOWAS	Economic Community of West African States
EITI	Extractive Industry Transparency Initiative
EMDP	ECOWAS Minerals Development Policy
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
GIPC	Ghana Investment Promotion Centre
GRA	Ghana Revenue Authority
MDAs	Mining Development Agreements
NGOs	Non-Governmental Organizations
OASL	Office of the Administrator of Stool Lands
OECD	Organisation for Economic Cooperation and Development
PNDC	Provisional National Defence Council
RECs	Regional Economic Communities
SADC	Southern African Development Community
SWF	Sovereign Wealth Fund
TEITI	Tanzania Extractive Industries Initiative
TMAA	Tanzania Minerals Audit Agency
TRA	Tanzania Revenue Authority
VAT	Value Added Tax
ZDA	Zambia Development Agency
ZEITI	Zambia Extractive Industries Transparency Initiative
ZRA	Zambia Revenue Authority

Executive Summary

This is a synthesis report of a study of three African countries: Ghana, Tanzania and Zambia focusing on the extent to which they have gone in tailor making their mining sector fiscal revenue as well as mining sector revenue management to the requirements of the Africa Mining Vision (AMV). The study also focuses on the mining regime and guidelines by the respective regional economic community (RECs) institutions from which these countries belong: the Economic Community for West African States (ECOWAS), the East Africa Community (EAC) and the Southern African Development Community (SADC). The synthesis report is based on the three country papers that were prepared as part of the project entitled, **'African Mining Vision Mapping Analysis Research: The Case of Ghana and the ECOWAS, Tanzania and the EAC as well as Zambia and the SADC'**, which was commissioned by the Tax Justice Network-Africa, Nairobi, Kenya in 2015. The synthesis report draws common elements and differences across the countries and regions with respect to domestication of the AMV.

The objective of the synthesis report is to enable a comparative evaluation of the AMV domestication process at national and regional level, using the three countries and three regions as case studies. This would help in the identification of the main issues on mining fiscal regime and revenue management that need policy attention with respect to harmonisation with the AMV aspirations.

The main findings from the synthesis include the fact that the mining fiscal regime in the three countries generally shows that they have systems in place to ensure that they improve national capacity to physically audit mineral production and exports. This is implemented by generally trained inspectors, which is in line with the AMV aspirations.

The three countries have also put in place several programmes intended to build capacity and enhance skills of officials in

negotiating fiscal issues and effectively monitoring compliance with taxation laws. The capacity to monitor, audit, verify and supply production data, however, still needs to be enhanced. Tanzania has benefitted more from programmes that are directly related, as some of these were actually coordinated by the African Mining Development Centre (AMDC), an institution which was established to spearhead the AMV compliance.

The three countries have also signed a number of BITs and double taxation agreements with other countries. However, the double taxation agreements have a number of loopholes which need to be revisited to ensure that the countries realize their full potential in getting revenue as per the AMV objectives. A significant challenge in the three countries is developing systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion. This is due to evidence of leakages in

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and losses through illicit financial flows which still continue. Thus the AMV recommendations on systems to curb illicit financial flows are yet to be fully adopted.

With respect to revenue use and management, Zambia is yet to put in place strategies for investing windfall earnings and mineral rent into sovereign wealth funds, including stabilization funds and infrastructure funds as specified by the AMV. Ghana and Tanzania have fully functional sovereign wealth funds in oil and gas sectors. Ghana also has a stabilisation fund, used mostly for reconstruction purposes. However, there are no such sovereign wealth and stabilisation funds for minerals, which are also finite like gas and oil. While there are other methods of contributing to the future welfare of citizens that could be taking place, emphasis was placed on sovereign and stabilisation funds by the AMV, which was the only yardstick adopted by this report. There is generally need for sovereign wealth funds in all the key minerals to ensure that future generations can also benefit from the resources after they are depleted.

Zambia has also failed to ensure, through policy and legislation, that there are some rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities as required by the AMV. Tanzania and Ghana have, however, tried to ensure that such a system is in place, through a levy in Tanzania and a share of the royalties in Ghana. Thus, Tanzania and Ghana have tried to act in line with the AMV aspirations, which Zambia is yet to do. In all the three countries, some mechanisms to ensure that the mining sector revenue

management capacity is enhanced are needed. There is need to speed up the process of ensuring that the Extractive Industries Transparency Initiative (EITI) process is made mandatory through a legal instrument requiring timely cooperation and reporting by companies and Government agencies. This would go a long way in complying with the transparency requirements under the AMV.

At the regional level, there have not been many achievements as far as AMV domestication is concerned at all the three RECs. A look at the expectation at the regional level under the AMV reflects three critical areas that still need to be done by all the three RECs, which are yet to be done in all the three RECs. The review of the fiscal environment to come up with guidelines for optimising mining sector revenue has not yet been done. Mineral taxation guidelines for implementation at the REC and national levels have also not been developed. In addition, typical financial models for mineral projects for member states also need to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels. These are the key expectations under the AMV for RECs to do as part of the AMV compliance process. The fourth expectation under the AMV is for RECs to compile best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels. Currently, there are efforts being made along these lines, although these are yet to be finalised.

The synthesis report makes the following recommendations at country and regional levels to enhance compliance with the AMV:

Ghana

- i. State departments and agencies must be re-oriented (by regional and continental bodies) to view the state machinery as developmental vehicle to support the AMV. Further there is need to increase their capacity (expertise, personnel and technological) to enable them implement the AMV as expected. The government must therefore reconsider increasing support to these agencies to ensure the protection of government's (and therefore the people of Ghana's) stakes in the mining sector;
- ii. Continental agencies responsible for the coordination of AMV implementation activities must seriously consider supporting public awareness engagements and campaigns to increase the pressure on state agencies as well as respond to threats by mining companies. This must be well planned and executed to ensure that all the key social and economic constituencies in the country and across the continent are engaged in an on-going process;
- iii. Citizens and citizens groups in Ghana must increase their level of awareness of the AMV agenda and increase their collaboration to establish an influential platform to support the implementation of the AMV;
- iv. Citizens groups and governments must also gather the courage to subordinate other parallel initiatives that can either dampen or conflict tenets of the AMV. This, in turn, would require that the AMDC is well supported (financially and otherwise) to undertake its functions

with greater level of seriousness that can attract other stakeholders to the AMV table.

Tanzania

- i. Tanzania needs to maintain the current attitude towards the AMV as seen by current efforts towards developing a Country Mining Vision (CMV) formulated along the AMV. The momentum that had arisen from current efforts being done at government level in collaboration with the AMDC need not be lost;
- ii. Tanzania needs to continue to strengthen the capacity of the Tanzania Minerals Audit Agency (TMAA) so as to ensure continuity in the mineral audit as well as consistency in the auditing capacity with evolving strategies at illicit financial flows that are constantly being used by players in the mining sector;
- iii. Tanzania should also continue to utilise the AMDC in other areas on mining sector revenue, including the capacity to negotiate mineral concessions as well as the best regime with respect to bilateral investment treaties (BITs) and double taxation agreements (DTAs) to ensure that the country attains the optimal mining regime as envisaged under the AMV;
- iv. Tanzania should also establish a sovereign wealth fund for other minerals in addition to the gas sector. Other minerals are critically important, as the rationale for the gas sector is equally applicable to the rest of the minerals;

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- v. Tanzania should develop a strategy to ensure that local communities, who are disadvantaged by mining activities have access to both sustainable alternative livelihoods and the mineral wealth so generated from their localities. Part of the mining revenue can be invested back into the community through infrastructure projects intended to enhance better health, education and water and sanitation.
- iii. Zambia need to develop systems to curb illicit financial flows from the mining sector as per the AMV recommendations;
- iv. As a way of improving its mining fiscal regime and attracting investors, Zambia needs to minimise bureaucracy in the issuance of mining rights, and ensure that there are clearly stipulated appeal procedures for issues to do with mining licences and rights;

Zambia

- i. There is need to enhance the capacity of Government officials to monitor, audit and verify mining sector production data and revenues. Capacity building should be structured in a way that takes into account the structural shift in the mining regime as envisaged by the AMV, where resources need to benefit the country more than the investor. Such capacity include training, provision of audit/monitoring equipment, as well as, recruitment of qualified and experienced professional staff.
- ii. Double taxation agreements that have been signed should be revisited to prevent further revenue leakages through the practice while ensuring retention of revenue in the country an objective aspired by the AMV. On the other hand, any new double taxation agreement signed should be designed to ensure that tax liability in Zambia is not unnecessarily eliminated as the mining resources are being mined;
- v. Zambia should put in place strategies for establishing sovereign wealth funds to ensure that future generations are catered for from the finite mining resources which are exploited by mostly foreign investors; and
- vi. Zambia should tighten its policy and legislations to ensure that the rent distribution system allocates part of mineral revenue to communities near mining areas.

Regional Level

Recommendations that can be made with respect to the SADC, the ECOWAS and the EAC include the following:

- i. There is need for a review of the fiscal environment to come up with guidelines for optimising mining sector revenue;
- ii. The SADC Secretariat should also develop mineral taxation guidelines for implementation at the national level;
- iii. Typical financial models for mineral projects for member states also need to be developed together

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with guidelines on mineral revenue management for implementation at the regional and national levels, as per the AMV recommendations;

- iv. Enhance efforts at compiling best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels.

1. Introduction

1.1. Background

In February 2009, the Heads of State and Government of the African Union (AU) adopted the Africa Mining Vision (AMV). The AMV serves as the key framework at the continent level to promote mineral resource based development and structural transformation. In particular, the AMV seeks to foster a transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development. The AMV focuses on the transformation of minerals as a strategy for overall development by ensuring that linkages between the mining industry and other sectors of the economy are strengthened. It also has measures to ensure that the allocation of revenue from the mining sector is done in an appropriate manner.

The AMV was established following the realisation that the nature of the mineral fiscal regimes was generally regressive, resulting in the share of governments falling as profitability of mining operations rose. This was also compounded by weak capacity of state agencies responsible for collecting taxes, incentive problems, inadequate transparency and the aggression with which foreign multinationals create loopholes in the system to reduce their tax burdens.

It has been nearly six and a half years since the AMV was adopted, yet the mining regimes in many African countries continue to be characterised by the same challenges that the AMV was established to address. This is due to the slow rate of domestication of the AMV principles by the African countries. Efforts at the Regional Economic Communities (RECs) and the continental level (AU) towards ensuring that the AMV provisions are adopted have also been at a slow pace. These efforts include the development of the 'Action Plan to Implement the AMV' by the 2nd AU

Conference of Ministers Responsible for Mineral Resources Development in 2011. The 2011 Action Plan presents a framework for translating the AMV from policy aspiration to practical actions that ought to be taken at various levels towards the realization of the AMV.

The Action Plan calls for the establishment of the Africa Minerals Development Centre (AMDC), which has since been established to coordinate activities of Member States, RECs and other stakeholders towards the realization of the AMV. In 2014, the AMDC developed a Country Mining Vision (CMV) Guidebook to help Member States migrate the AMV to the national level.

The CMV was developed as a tool to facilitate the domestication of the AMV at country level. However, the CMVs are not intended to replace national mining sector mineral policies, as not all countries are expected to formulate a CMV. It is mostly the major mineral economies that are expected to develop CMVs, which is expected to

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be grounded in the political economy of a country's policy-making and reform process. The CMV is important in that it would ensure that the extractive sector is fully included and embedded in national development plans and strategies and are aligned to the AMV.

This study is a synthesis report which showcases the situation in three countries; Ghana, Tanzania and Zambia with respect to the extent to which their policies in the mining sector are in line with the provisions of the AMV. The report also focuses on the mining regime and guidelines by the respective RECs from which these countries belong; the Economic Community for West African States (ECOWAS), the East Africa Community (EAC) and the Southern African Development Community (SADC). The synthesis report is based on the three country papers that were prepared as part of the project entitled, **African Mining Vision Mapping Analysis Research: The Case of Ghana and ECOWAS, Tanzania and EAC as well as Zambia and SADC**, which was commissioned by the Tax Justice Network-Africa, Nairobi, Kenya.

1.2. Objectives of the Report

The synthesis report is a comparative analysis of three countries namely; Zambia, Tanzania and Ghana and their respective Regional Economic Communities. The main objective of the comparative analysis is to identify gaps and determine the extent of domestication of the AMV at the national and regional levels with particular focus on the fiscal issues of mining.

The specific objectives of the synthesis report include:

- i. Showcasing a scorecard that measures national implementation of the AMV with indicators on:
 - a) Fiscal regime and tax compliance
 - b) Revenue management;
- ii. Showing progress on the regional harmonisation and national domestication of the AMV's Fiscal Regime and Revenue Management initiative using research based evidence at national and regional level.

1.3. Methodology for the Report

This report is entirely based on the research reports for case studies carried out in three selected countries namely Zambia, Tanzania and Ghana as well as their respective Regional Economic Communities, focusing on the mining/extractives sector fiscal regime and revenue management policy. The synthesis report thus does not involve new research but simply distils information from the country papers. The respective papers on which this synthesis report is based are the following:

- i. Country and Regional level Africa Mining Vision (AMV) Gap Analysis and Mapping for Ghana and the ECOWAS Region, by Alhassan Atta-Quayson, 2015;
- ii. African Mining Vision Mapping Analysis: The Case of Tanzania, by Cornelius Dube and Aliaza Mkuna, 2015;
- iii. African Mining Vision Mapping Analysis: The Case of Zambia, by Cornelius Dube, Wellington Matsika and Gamuchirai Chiwunze, 2015.

1.4. Scope

Although this study focuses on the three countries and their respective RECs. It is critical to note that the information is limited to what the three country papers presented. It

is also important to note that while the three countries are case studies, the findings have not been interpreted to represent all the other countries in the regions from which the three were chosen.

2. AMV Key Provisions on the Mining Sector Fiscal Regime and Revenue Management

Following the adoption of the AMV, one of the strategies identified by the African Union (AU) Heads of State and Government to ensure its effective implementation was the establishment of the African Minerals Development Centre (AMDC). The AMDC was established to provide strategic operational support for the Vision and its Action Plan.

In November 2012, The African Minerals Development Centre Business Plan was developed, with financial support from the Australian and Canadian Governments. The Mission of the AMDC is to work with AU member States and their national and regional organisations, including RECs, to enable mineral resources to play a greater transformative role in the development of the continent. However, although the AMDC has now been established, it is not performing very active roles in ensuring that all countries start the AMV mapping process.

The AMV groups aspirations into three; those that pertain to the short term (within 5 years), the medium term (5-20 years) and the long term (over 20 years). The provisions which pertain to mining sector fiscal regime and revenue management include the following:

a. Short Term Issues

The short term aspiration of the AMV includes promoting natural resources governance. This includes managing

stakeholders' engagement¹ throughout the mine life cycle² and improving the management of transfer payments associated with the mining activities. Within the context of the mining industry, such transfer payments mainly focus on returns to shareholders and service providers during all stages of the mine life cycle. In order to achieve this, the AMV recommends the following activities:

- i. Mainstreaming Extractive Industries Transparency Initiative (EITI) principles and the Kimberly Process Certification Scheme in national policies, laws, and regulations;
- ii. Encouraging the establishment of national oversight bodies and incorporating parliamentarians and independent committees in the monitoring of mining projects;
- iii. Considering decentralization of mineral revenue distribution;
- iv. Building capacity to manage mineral revenue of national and sub-national institutions.

¹ There are different stakeholders that can be identified across the mining life cycle stages. These include the communities affected by the mining, extraction companies, artisanal and small scale miners, mining sector advisers, lawyers, financiers, explorers, analysers, installation and drilling companies, transportation companies, government and government agencies as well as other specialists focusing on decommissioning and environmental clean-up activities.

² The mine life cycle has five main stages: (1) contract negotiation and signature; (2) exploration activities and evaluation; (3) development of the infrastructure; (4) extraction, production and export; as well as (5) abandonment and decommissioning.

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The AMV also considers the fostering of inter-generational equity in the sharing of resources generated from the minerals sector as one of its short term aspirations. To achieve this, the AMV recommends that countries should consider the use of 'Future Generation Funds' and 'Stabilization Funds' as strategies to build resources that would be enjoyed by future generations. The AMV also recommends the integration of mining in national development plans and poverty reduction strategies as a strategy to ensure inter-generational equity. The objective could also be met by considering initiatives to decentralize revenue distribution and allocation as well as ensuring broad-based, active and visible involvement of affected communities in the approval, planning, implementation, and monitoring of mining projects.

Another short term aspiration of the AMV is for countries to ensure capital mobilization into the mining sector. This includes harnessing the potential offered by public-private sector partnerships as well as instituting innovative approaches to improve domestic savings and channelling them to finance national projects/programmes.

b. Medium Term Issues

In the medium term, the AMV recommends countries to strengthen the enforcement of standards, legislations or codes governing the mining industry. This involves improving the legal and regulatory framework governing the mining industry and increasing public awareness and participation in formulating the regulatory framework. This also involves developing enforcement strategies with

credible and strong criminal sanctions and licence revocation in case of illegal conduct involving mineral resources. Legislations governing the mining industry also need to ensure consistency and predictability by developing explicit and clearly defined rules and guidelines to reduce the scope for conflicting interpretations.

The AMV also recommends the need to improve the value chain and maximize diversification of economies as one of its medium term aspiration. This would include mining resource diversification, which would include the creation of a conducive environment for development of backward and forward linkages, value addition (especially semi processing and cluster development), with technology sharing among countries. This would also include investment of rent/capital generated through resources into other sectors of the economy.

c. Long Term Issues

With respect to the mining industry, the long term aspiration of the AMV is to maximize the local economic multipliers and spill-overs. This would be achieved by diversification away from mineral resources, based on linkages to ensure that rent/capital generated through mining sector resources is invested into other sectors of the economy. Thus the long term is mostly concerned with consolidating the gains from the mining industry to ensure that mining contributed meaningfully to gross domestic product as well as poverty alleviation and society well-being.

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AMV Action Plan, 2011

The AMV Action Plan comprises of nine programme clusters of activities as follows:

- i. Mineral rents and management;
- ii. Geological and mining formation systems;
- iii. Building human and institutional capacities;
- iv. Artisanal and small scale mining;
- v. Mineral sector governance;
- vi. Research and development;
- vii. Environment and social issues;
- viii. Linkages and diversification;

- ix. Mobilising mining & infrastructure investment.

Given that the Action Plan is the follow up instrument that would be used to assess the countries' progress towards domesticating the AMV, it is critical to outline some of these key variables to be considered. While the Action Plan focuses on all key aspects which are the focus areas of the AMV, only those that pertain to mining sector fiscal regime and revenue management have been selected for this report. These measures are classified as short term (ST), medium term (MT) and long term (LT) at the national level as follows:

Table 1: Mining sector fiscal regime and revenue management strategies under the AMV at National Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries	Improve national capacity to physically audit mineral production and exports.	ST	Physical audit system in place and implemented with trained inspectors.
	Review mineral regimes in terms of optimising revenues.	ST	Reviews of mineral regimes undertaken and Level of improvement in fiscal revenue collected by African mining countries.
	Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	ST-MT-LT	Increase in numbers of policy makers and other stakeholders participating in capacity building initiatives.

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Enhanced share of mineral revenue accruing to African mining countries	Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.	ST-MT	Degree of improvement in the design of fiscal terms.
	Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	ST-MT	Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance.
	Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction.	ST-MT	Number of double taxation agreements signed and implemented by member States.
	Build capacity & systems to auction mineral rights where applicable.	ST	Extent to which competitive and transparent mineral concession systems are implemented.
Improved management and use of mineral revenue	Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.	ST	Number of SWFs established by African mining countries.
	Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	ST	Degree to which local authorities and communities benefit from mining projects.
	Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	ST-MT	Degree to which local authorities and communities benefit from mining projects.

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Improved management and use of mineral revenue	Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	ST-MT	Degree to which local authorities and communities benefit from mining projects.
	Develop the capacity of local communities to negotiate partnership agreements.	MT	Degree to which local authorities and communities improve their management of mineral revenues.
	Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	MT	Extent to which guidelines are used by RECs and member States.

Sources: AMV Action Plan, 2011

The Action Plan also identifies strategies and monitoring indicators at the regional level (Table 2) which also have clearly defined time frames.

Table 2: Mining sector fiscal regime and revenue management strategies under the AMV at Regional Level

Expected outcome	Activities	Time frame	Monitoring indicators
Enhanced share of mineral revenue accruing to African mining countries.	Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. Tax & dividends) packages in a manner that does not discourage mining investment.	ST	Guidelines, standards and toolkits completed and distributed to RECs & member states.
	Develop mineral taxation guidelines for implementation at the REC & national levels.	ST	Guidelines, standards and toolkits completed and distributed to RECs and member states.
	Develop typical financial models for mineral projects for member states and run training workshops at REC level.	ST	Guidelines, standards and toolkits completed and distributed to RECs and member states.

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Enhanced share of mineral revenue accruing to African mining countries.	Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. Tax & dividends) packages in a manner that does not discourage mining investment.	ST	Guidelines, standards and toolkits completed and distributed to RECs & member states.
	Develop mineral taxation guidelines for implementation at the REC & national levels.	ST	Guidelines, standards and toolkits completed and distributed to RECs and member states.
	Develop typical financial models for mineral projects for member states and run training workshops at REC level.	ST	Number of financing models that are developed and used by member States.
Improved management and use of mineral revenue.	Compile best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels.		Best practise guidelines on mineral revenue management compiled.

Sources: AMV Action Plan, 2011.

Thus, these are some of the issues that would be the context with which the regimes in the three countries and at the REC level have to be assessed.

3. Overview of Country Mining Sector Fiscal Regime

3.1. Overview of Ghana Mining Sector Regime

3.1.1 Mining sector fiscal regime

While it is possible to describe the general fiscal regime that applies to the mining sector, it is critical to note that the mining law in Ghana permits the government to enter into a stability agreement with individual mining companies that can vary downwards some of the rates or altogether deny otherwise eligible mining firm from honouring certain tax obligations. Though stability agreements are ratified by the Parliament, they are usually difficult to access for third parties to understand their terms. Thus, the regime to be described in this section might not reflect the exemptions that accrue as a result of the stability agreements. However, the various tax heads that are applicable to the mining sector in Ghana can be given as shown in Table 3.

Table 3: Various tax heads that apply to the mining sector in Ghana

Fiscal Element or Impost	Description	Current Rates
Royalty	Production base tax by mining lease holders. The rate applies to value of mineral won.	5%
Corporate Income Tax	Tax on Net Profit of Company	35%
Withholding Tax	Tax on dividends to shareholders, management fees, consultant's fees paid to contractors and loan interest.	10%
Capital Gain Tax	Tax on profits on sale of mine assets or mine.	10%
Additional Profit Tax	This is a levy on windfall profits or extra rents generated by mining firms, often arising from price hikes or discovery of unexpected high quality or grade mineral deposits.	0% ³
Import License tax or import levy	Levies on imports or regular payments made to obtain a license to import.	Exempt
Mineral Duty		Exempt
Import Duty	Additional duties on imports	Exempt

³ There is a new bill in parliament to re-introduce the additional profit tax but a reduced rate of 10%. It has been fiercely resisted by the mining companies as they complain it will overburden them. But the government is hoping to rely on this to ensure that wealth created on the country's irreplaceable mineral resources is shared fairly among stakeholders.

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Foreign Exchange Tax	A tax charged for the utilization of foreign exchange earnings.	Exempt
Gold Export Levy	A charge imposed on export of gold (usually in raw state)	Exempt
Property Rate	Rates levied on immovable properties of mining firms by local assembly including machineries. The rates are set by the local assemblies through bye-laws and vary from one jurisdiction to the other.	
Ground Rent	Annual payment by mineral right holders to land owners or Office of the Administrator of Stool Lands.	Increased from GHC0.5 per acre to GHC36.6 per acre.

The regime presented in Table 3 is a result of several revisions to the tax regime over the years. Royalty rate ranged between three and 12% until 2006 and between 3% and 6% up to 2009. This is because the royalty rate applicable was determined by a miner's rate of return which takes account of all the allowances provided in the fiscal regime. Given the approach, which allows for almost indefinite carried forward of losses, mining companies were always unable to go beyond the rate of return that will make them eligible to pay royalty rate above 3%. When the new law was passed in 2006, there were expectations that the formula for calculating a mine's rate of return, which triggers increases in actual royalty rate payable within the range, would be reviewed to remove some of the generous allowances that prevented mining companies from paying more than 3%. Unfortunately, that review never took place amid discussions between the Minerals Commission and the Ministry of Finance.

Mining revenues in Ghana are also affected by other provisions for stability agreements

between government and mining firms, which appear to be tilted in the favour of mining companies. For example, the Ghana Investment Promotion Centre (GIPC) law passed in 1994 and subsequent amendments allows foreign investors (including mining firms and their affiliates) to enter into an agreement with the GIPC that enables such investors to remit a fixed proportion of revenues to mother companies as management fees or some other fees. This remittance is usually set against profit before tax, effectively shrinking the tax base. The fiscal implications of the GIPC law on the mining sector revenue could be significant, for example the provision in Newmont Ghana Gold's stability agreement permits the company to remit about 3% of its revenues to its mother company in the United States of America in management fees.

3.1.2 Mining sector revenue use and management

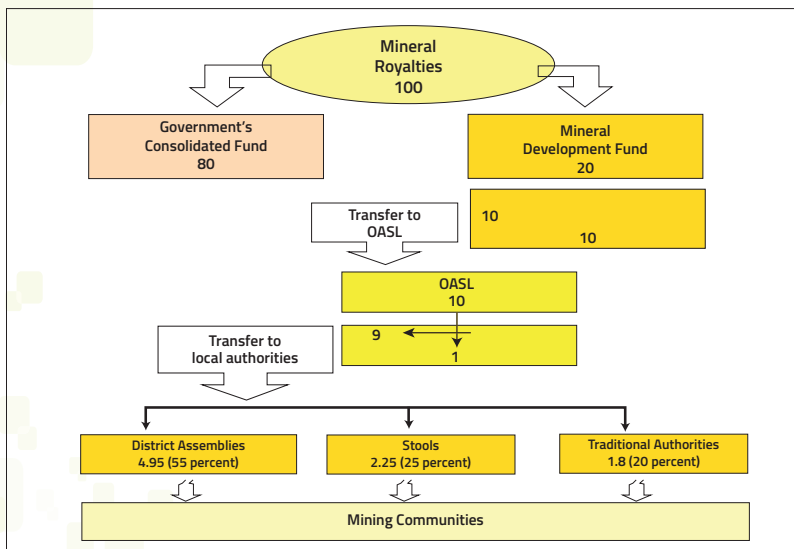
Mineral revenues are collected at three different levels in Ghana, with the fourth stream being the ground rents paid directly

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to land owners. Most of the revenues are collected by the Ghana Revenue Authority, an agency of the Ministry of Finance and Economic Planning. The Minerals Commission of Ghana is also authorized to charge fees for rendering certain services. Mining fees collected by the Minerals Commission are utilized by the Commission, largely on recurrent expenditures. At the local level, municipal and district assemblies also collect certain types of revenues from the mining sector, mainly property rate. The property rates received by the municipal and district assemblies form part of their internally generated funds and are used to finance both capital and recurrent expenditures. All other revenues from the mining sector end up in the Consolidated Fund of the Government of Ghana and are used for both capital and recurrent expenditures.

Among the revenue streams, it is the royalties that return the largest chunk of mining revenues to the country. About 80% of the royalties go into the Consolidated Fund while the remaining 20% is distributed into the Mineral Development Fund for various purposes (Figure 1). Of this 20% that goes into the Mineral development Fund, 50% is used to finance mining departments and agencies, while the other 50% is transferred to the Office of the Administrator of Stool Lands (OASL). Out of the funds that are transferred to the OASL, about 10% caters for the administration costs of the OASL, while 90% is transferred to local authorities. The local authorities are expected to use the revenue for developmental projects following a guideline produced by the Minerals Commission, of which about 55% of the receipts would benefit district assemblies, 25% the mining communities (stools) and 20% the traditional authorities.

Figure 1: Framework for Distributing Mineral Royalty



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Another institution with a role to play in revenue management is the Ghana Customs, Excise and Preventive Service (CEPS). CEPS is the state organization responsible for the collection of taxes levied on imports, exports and some locally manufactured goods. In addition, CEPS also ensures the protection of the revenue by preventing smuggling by physically patrolling the borders and other strategic points, examination of goods and premises, as well as documents relating to the goods. Thus CEPS is also responsible for verifying production figures of gold (the basis for paying royalties and other taxes).

3.2. Overview of Tanzania Mining Sector Regime

3.2.1 Mining sector fiscal regime

The mining sector fiscal regime in Tanzania is governed by the Mining Act, 2010, in addition to the general tax legislation such as the Income Tax Act Cap. 332, 2008 and the Value Added Tax Act, 2014. These, together with the various regulations that are passed each year in response to the various fiscal policy announcements, have created a mining regime which can be described as follows:

a. Royalties

Based on sections 87 to 92 of the Mining Act of 2010, every authorized miner has to pay to the Government of the United Republic of Tanzania a royalty on the gross value of minerals produced⁴ at the following rates:

- i. In the case of uranium, a rate of 5%;
- ii. In the case of gemstone and diamond, 5%;
- iii. In the case of metallic minerals such as copper, gold, silver, and platinum group minerals, 4%;
- iv. In the case of gem (cut and polished), 1%;
- v. In the case of gold and other metallic minerals, 4%;
- vi. In the case of other minerals, including building materials, salt, all minerals within the industrial minerals group, 3%.

b. Input Taxes

Mining companies enjoy import duty exemption for mining equipment and supplies directly related to the mining operations which is granted up to one year after the start of production. After that, the mining companies enjoy a cap limit of 5% customs duties on imports of capital equipment and supplies. Value Added Tax (VAT) on domestic sales is 18% and exports are zero-rated. There is full relief from VAT for services or goods exclusively for mining activities. Holders of mineral rights are exempted from domestic withholding tax on goods and services supplied by them. However, they shall be obliged to withholding tax on domestic goods or services purchased by them.

Withholding tax on technical service payments to subcontractors is fixed at 5% to residents and 15% to non-residents. Fuel Taxes (Fuel Levy and Excise duty on fuel) is charged at a flat rate of US\$200,000 per annum, while

⁴ "Gross value" means the market value of minerals at the point of refining or sale or, in the case of consumption within Tanzania, at the point of delivery within Tanzania

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the Local Government levy is charged at 0.3% of annual turnover and is paid to the local government authority where the mine is located.

c. Profit Taxes

Corporate tax on income from mining activities is 30% of the net income of the corporation, which is standard for all corporate bodies in Tanzania. Since July 2010, there is 'ring fencing' in the Tanzania mining sector, where losses incurred in one mine cannot be used to offset profits of another mine, even if both mines are part of the same legal entity. This is intended to maximize tax payable. Depreciation is allowable to all mining capital expenditure and on exploration and production rights.

Withholding tax on paid out dividends and tax on distribution of branch profits to non-residents is 10%. Withholding tax rates on loan interest or interest paid to related parties is 10%, but shall not apply to interest paid to resident financial institutions.

Under the Mining Act, 2010, in an effort to ensure that the rights of both parties are fully defined and protected, holders of Special Mining Licences (for investments exceeding US\$100 million) may enter into mining development agreements (MDA) with the Government. The MDAs also have an impact on the amount of tax payable by the firm that has signed for it. For example, the terms that some mining firms in terms of tax payments tend to be more favourable than what they could have obtained in comparative regimes. Thus, while this is good as an investment attraction, it also involves reduction in revenues due to the government. In addition,

the MDA actually provides that these terms can only be reviewed after the end of 10 years, which might imply that any new fiscal reviews would not apply to a firm that has an MDA with government.

3.2.2 Mining sector revenue use and management

The management of the revenue from the mining sector can best be understood by a description of the key institutions that have a role to play in the collection and management of the revenue. These include the following:

a. Ministry of Energy and Minerals

The Ministry of Energy and Minerals is responsible for guiding the development of the Mineral Sector in Tanzania through its Mineral Division. It is responsible for issuing licences and collecting the associated fees, including annual rental fees and other charges. The fees collected through the licensing system by the Ministry are accounted for as part of the consolidated fund.

b. The Tanzania Minerals Audit Agency (TMAA)

The Mineral Policy 2009 stipulated the need for an auditing institution that could cover the mining of all minerals at large, medium and small scale mines. In November, 2009, the government established the Tanzania Minerals Audit Agency (TMAA), a semi-autonomous institution entrusted with conducting 'financial and environmental audits as well as auditing the quality and quantity of minerals produced and exported by miners in order to maximize benefits to the Government from the mining

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industry for sustainable development of the Country.

The TMAA visits major mines every year. It checks records, including main accounting summary records and underlying documentation and invoicing. After the visit, it drafts a report containing its conclusions both for royalties and other tax purposes (including income taxes), focusing on comparing tax liability and actual payments. Final audit reports by the TMAA are submitted to the Minister of Energy and Minerals, the Minister of Finance and Economic Affairs and the Commissioner General of the Tanzania Revenue Authority.

c. The Tanzania Revenue Authority (TRA)

The Tanzania Revenue Authority is a key player in revenue administration in the mining sector. It administers all taxes applicable to the sector. These include taxes on income (including corporate income tax, employment taxes and withholding taxes) and tax on consumption, mainly VAT and customs duties. Taxes on the mining sector are handled by the Large Tax payers Department in TRA.

Revenue collected from the mining activities in Tanzania is subject to the central government's general resource allocation system as tax revenues are part of the consolidated fund. This implies that mineral revenues can only be channelled back to the mining communities through the general expenditure allocations approved in the annual budget process.

Tanzania is also at an advanced stage in setting up a sovereign wealth fund, focusing

mostly on natural gas. The Natural Gas Policy of 2013 proposes for a Natural Gas Revenue Fund to be established and managed to ensure transparency and accountability over collection, allocation, expenditure and management of all natural gas revenues. Among other objectives, the Fund was established to safeguard resource for future generations. The Fund financed by

- (a) Royalties;
- (b) Government profit share;
- (c) Dividends on Government participation in oil and gas operations;
- (d) Corporate income tax on exploration, production and development of oil and gas resources;
- (e) Return on investment of the Fund.

By legislation, the amount of money deposited in the Fund shall not be used:

- (a) For providing credit to the Government, public enterprises, private sector entities or any other person or entity;
- (b) As collateral or guarantees, commitments or other liabilities of any other entity;
- (c) For rent seeking or be the subject of corrupt practices, embezzlement or theft.

3.3. Overview of Zambia Mining Sector Regime

3.3.1 Mining sector fiscal regime

Taxes are levied on the mining sector in Zambia as per the provisions of the Income Tax Act (Chapter 323) and the Mines and Minerals Development Act (No 7 of 2008). The majority of the taxes are collected by the Zambia

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Revenue Authority (ZRA) which is mandated to collect taxes from corporates and individuals.

All holders of licences, which include large-scale and small-scale mining licence, gemstone licences and artisanal mining rights, are required by law to submit a monthly mineral royalty return within fourteen days after the end of the month in which the sale of the minerals is done. Failure to submit attracts penalties, which include one thousand penalty units (or ZMW 180.00) per month or part thereof for individuals and two thousand penalty units (or ZMW360.00) per month or part thereof for companies. Royalties fall due within fourteen days after the end of the month in which the sale of minerals is done.

The royalty charges also extend beyond the miners. A person without a mining right but in possession of minerals on which mineral royalty has not been paid by the supplier of the minerals is also liable to pay royalties. People carrying out quarrying of industrial minerals are also liable to mineral royalty, which also includes the quarrying of gravel, clay and sand. In addition, mining of minerals for use as inputs or raw materials in manufacturing process is also liable to mineral royalty.

For the purpose of calculating royalties, minerals are classified into five categories; Base Metals, Energy Minerals, Gemstones, Industrial Minerals and Precious Metals. For industrial, energy and gemstones, mineral royalty is calculated based on Gross Value of minerals produced. Gross value is defined as “the realizable price for sale Free on Board

at the point of export in Zambia or point of delivery within Zambia”. For base metals and precious metals, the ‘Norm Value’ method is used to calculate mineral royalty. Under this method, mineral royalty is calculated based on:

- i. The monthly average London Metal Exchange cash price per metric ton multiplied by the quantity of the metal or recoverable metal sold;
- ii. The monthly average Metal bulletin cash price per metric ton multiplied by the quantity of the metal or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange;
- iii. The monthly average of the cash price per metric ton of any other exchange market approved by the Commissioner General of the Zambia revenue Authority multiplied by the quantity of the metal or recoverable metal sold to the extent that the metal price is not quoted on the London Metal Exchange or Metal Bulletin.

The rates are prescribed by the minister responsible for mining while the collection of the royalties is carried out by the ZRA. As of 2015, the rates prescribed by the Mines and Minerals Development (Amendment) Act No. 11 of 2014, Income Tax (Amendment) Act (Pay As You Earn Regulations), Statutory Instrument No. 50 of 2014 and the Income Tax Act (Turnover Tax) (Amendment) Regulations, Statutory Instrument No. 70 of 2014, are as follows (Table 4):

Table 4: Taxes and levies on the Zambia Mining Sector

Revenue Head	Tax rate
Corporate Income Tax	30%
Value added Tax	16%
Pay As You Earn	0-35%
Customs Duty	0-60%
Export tax on Copper, cobalt concentrates and other semi and unprocessed mineral ores	10-15%
Withholding tax on mining companies dividends	0%
Transfer tax on mining rights/interest in mining right	10%
Mineral Royalties	
Open cast Mining	20% of the norm or gross value
Underground Mining	8% of norm or gross value
Industrial Minerals	6% of gross value
A person who is not a holder of a mining right or licence who extracts minerals or is in possession of minerals extracted in Zambia is liable to pay mineral royalty	6% of the gross value for industrial minerals; and 9% of the norm or gross value for other minerals

However the mining firms are also allowed capital deductions on mining equipment and related capital expenditure. Pre-production capital expenditure and environmental restoration costs are all 100% deductible from profit before tax. The mining companies are also allowed to carry forward losses arising from prospecting and exploration in prior periods to knock off against future periods to a maximum of 5 years.

3.3.2 Mining sector revenue use and management

Tax revenues in Zambia are collected by the ZRA on behalf of the Ministry of Finance and are deposited in the general accounts (Control 99) at the Bank of Zambia. The Control 99 Account contains revenues from all the sectors

of the economy. The Ministry of Finance allocates the revenue from Control 99 in the budget to all sectors of the economy, including districts and provinces. The revenues from the extractive industry are just consolidated with other revenue sources in the Control 99. Thus, the mining sector revenue is generally not earmarked and thus is used to finance all activities through the national budget.

In addition to direct payments, the mining sector also contributes indirectly to the general accounts through payments to various Government departments and agents. This includes property rates and business annual fees, directly paid by mining companies to government agencies and councils in their areas of operation. Non-tax revenue paid by mining companies to government agencies

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such as Ministries of Mines and Lands is in turn sent to Ministry of Finance and deposited in Control 99.

The taxes and royalties collected by the ZRA are reported by treasury to the legislature. The ZRA conducts regular audits at least three times a year of all mining companies on taxes such as VAT and PAYE. The ZRA also makes assessments of corporate tax and mining royalties based on information provided by mining companies. The ZRA also makes assessments of corporate tax and mining royalties they have collected from mining companies and these assessments are in turn scrutinized by the Office of the Auditor General, which reviews the revenues received and collected by the ZRA. After the review by the Office of the Auditor General, the revenues received and collected are then scrutinized by the Parliamentary Public Accounts Committee. The Committee on Economic Affairs and Labour is also directly responsible for the mining industry and reviews mining revenue and mineral production.

The Office of the Auditor General (AG) reviews the financial accounts of all mining companies. The AG's audit reports are supposed to be submitted within twelve months after the end of the fiscal year. However, in practice they do not come out within this period and the findings are not followed up with action that is effective to deter financial malpractices by the institutions covered by the AG.

The Ministry of Finance through the national budget allocates and transfers funds to districts and provinces. However these transfers are from Control 99 and

not directly linked to revenues from mining companies. Thus there are no resource specific sub-national transfers from the central government. However, the civil society successfully lobbied for transfers in 2008, which saw provisions for the establishment of a Mineral Royalty Sharing Mechanism under Section 136 being incorporated into the Mines and Minerals Development Act of 2008. The implementation of the provisions has remained a challenge.

There are Constituency Development Funds designed to give local governments more control over funding but they all receive the same amount despite the presence of mining operations or lack of it in a constituency. Local governments collect operating fees paid to the local councils in which the extractive companies operate. They also collect property taxes payable to local authorities by all extractive companies who own properties. However, apart from the Constituency Development Funds from the central government's Control 99 Account, local governments do not receive additional revenue transferred to them by the central government on the basis of the presence of a mine in their region. Therefore, local communities do not fully benefit from the presence of a mineral resource in their area.

Unsuccessful attempts have also been made towards establishing a sovereign wealth fund in Zambia. In the 2007/8 financial year, Zambia created a separate Mining Resource Account at the Bank of Zambia which was intended to save the revenue windfalls expected from the mining sector following the 2008 tax regime changes. The intention was that starting in

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2009, the net inflows to the Mining Resource Account would be based on the medium-term expenditure framework, although the mineral price slump reduced tax payments in that year. However, that did not materialise.

In announcing the 2015 National Budget Statement, the Minister of Finance proposed about ZMW100 million⁵ for the establishment of a sovereign wealth fund. This, however, is still work in progress at the moment.

⁵ Equivalent to about US\$19 million at the time.

4. REC Guidelines on Mining Sector Fiscal Regime

4.1. ECOWAS Guidelines on Mining sector fiscal regime and revenue management

In the ECOWAS, there is no regional framework that has been established to ensure that there is a common mining fiscal regime or a common revenue management framework. As a result, the region is still characterized by differences in approaches among the member countries. However, there are indications that the need for such a regime has been noted at the regional level. For example, the ECOWAS already aspires to have harmonized mining sector policy and regulatory frameworks in the region. Article 31 of the Revised ECOWAS Treaty prescribes that "Member States shall harmonize and coordinate their policies and programmes in the field of natural resources" and also "coordinate their programmes for the development and utilization of mineral and water resources".

In 2009, the 62nd Ordinary Session of the Council of Ministers of the ECOWAS adopted a Directive which seeks to effect the harmonization of guiding principles and policies in the mining sector. Three years later, in 2012, the ECOWAS Minerals Development Policy (EMDP) was developed on the back of the Directive and adopted by the 40th Ordinary Session of the Authority of Heads of State and Government through a Supplementary Act.

Following these two major developments at the regional level, the ECOWAS Commission has been engaging relevant departments and agencies of Member States on the best approaches for the implementation of the EMDP. Thus, the implementation of the policy is yet to start in earnest.

The EMDP envisions harnessing the enormous resource endowments of the Community to facilitate sustainable economic growth and integrated socio-economic development in the region.

However, the ECOWAS is yet to undertake steps in initiating the harmonization process by coming up with the necessary guidelines for member states.

4.2. EAC Guidelines on Mining sector fiscal regime

The foundation of the mining sector strategies in the EAC is Article 114 of the EAC Treaty focusing on Management of natural resources. In the Article, which focuses on the management of the mineral resources sector, member states agree, among other things, to pursue the creation of an enabling environment for investment in the mining sector and to harmonise mining regulations to ensure environmentally friendly and sound mining practices.

The EAC Protocol on Environment and Natural Resources Management can also be regarded as the policy regime that has been done at the EAC level on the mining sector.

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However, the protocol is not yet in force as Tanzania is yet to ratify it. Article 18 of the protocol focuses on the mining sector. Among other issues, it provides that The Partner States shall develop and harmonise common policies, laws and strategies for access to and exploitation of mineral resources for the socio-economic development of the Community. The Partner States should also aim at developing strategies on sustainable production, value addition and marketing of minerals and their products, with effective measures being in place to regulate mineral resources trading in the Community. All the envisaged activities are, however, currently on hold, as Tanzania is still consulting stakeholders before committing to ratify the protocol.

The EAC Secretariat, has, however, been engaged in a lot of activities in line with Article 114 of the EAC Treaty. A programme to facilitate the development of extractive and mineral processing industries is currently being formulated through technical support from the Commonwealth Secretariat. The objectives of the project include:

- i. Review of regulations, policies and laws governing the extractive industries and mineral processing with a view to making such regulations more supportive of the development of extractive industries and mineral value addition;
- ii. Strengthening regional and national capacities in mineral development policy;
- iii. Identification of opportunities for investment in extractive industries and mineral value addition.

Efforts towards the harmonization of mineral policy and regimes in the Partner States are also underway. The focus areas for harmonisation include the following, which would also have a bearing on mining sector revenue:

- i. Access to and ownership of minerals;
- ii. Mineral royalties to Government and communities;
- iii. Taxation regimes;
- iv. Benefits for the Communities during and after mining;
- v. Value addition to minerals with consequent employment and entrepreneurial development;
- vi. Role of the communities, local authorities, central government and the mining companies;
- vii. Marketing of minerals.

4.3. SADC Guidelines on Mining sector fiscal regime

The foundation for the mining sector fiscal regime and revenue management in the SADC is the SADC Protocol on Mining, which came into force in 2000. The Protocol seeks to promote interdependence and integration of the mining policies to accelerate development and growth of the mining sector in the region by avoiding the “race to the bottom” whereby countries compete by lowering tax rates and offering undue fiscal incentives. The protocol specifies the following areas of cooperation:

- i. Harmonizing national and regional policies, strategies and programmes;
- ii. Developing human and technological capacities;

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- iii. Promoting private sector exploitation of mineral resources;
 - iv. Improving availability of information to the private sector;
 - v. Promoting small-scale mining;
 - vi. Developing and observing internationally accepted standards of health, mining safety and environmental protection;
 - vii. Promoting economic empowerment of the historically disadvantaged in the sector.
- a) International tax issues,
 - b) National tax issues,
 - c) Local government/regional tax issues.
- v. Minerals administration and development systems;
 - a) Beneficiation, minerals marketing, cluster development, environmental management and participation in management of mining enterprises.
 - vi. Artisanal and small scale mining;
 - vii. Research and development;
 - viii. Human resources and skills development;
 - ix. Gender.

Although the Protocol does not expressly spell out mining sector fiscal regime guidelines, the thematic area on harmonising national and regional policies, strategies and programmes also includes fiscal regime issues. Under this thematic area, the SADC seeks to harmonize the fiscal environment to prevent the situation where countries compete in attracting investors by offering fiscal incentives that eventually result in low government take in extractive sector revenues.

Pursuant to the need for harmonisation of mineral policies and regulatory frameworks to reduce differences in the operating environment between the SADC member countries, the SADC started the process of harmonization in 2004 by developing a regional harmonization framework based on international best practice. Nine areas of harmonization were identified as follows:

- i. Mineral policies;
- ii. Political, economic and social environment;
- iii. General investment environment;
- iv. Mining fiscal environment;

The regional harmonisation framework outlined the benchmarks/milestones that member states should set within the international context towards developing a common approach to the minerals sector and the timelines of achieving the benchmarks. Insofar as harmonisation of mining fiscal environment is concerned, the framework recommended the following should be achieved in the short-term (2-5 years):

- i. Harmonization of international taxation approaches;
- ii. Harmonization of national taxation issues;
- iii. Harmonization of local tax issues.

With respect to mining sector revenue use and management, the use of tax revenue is guided by the SADC Protocol on Finance and Investment of 2006, in which the region seeks to achieve Macroeconomic Convergence by member countries.

5. Mapping With The AMV: Mining Fiscal Regime

5.1. General comparison with AMV

Based on the various attributes that would go a long way in meeting the AMV aspirations, a general comparison can be made between the mining sector provisions in the AMV and those of the three countries as follows:

5.1.1. Delivering value for the country over the long-term

A mining sector regime can only be argued to deliver value for the country in the long term if it recognizes that resources are finite and that mechanisms should be put in place to ensure that other sectors of the economy would benefit through linkages. The economy cannot realize value in the long term from mineral resource extraction if all the resources are being exported in their raw form with little or no economic linkages with other sectors of the economy. Thus, a mining sector regime that encourages value addition and beneficiation, through export taxes for raw minerals as well as policy support measures for value addition and beneficiation would deliver value for the country over the long term.

An assessment of the mineral regime generally shows some reluctance to impose any export taxes as a strategy to encourage beneficiation of minerals in Ghana and Tanzania. In Ghana, although the legislation provided for an export levy on gold in its raw form, subsequent amendments saw the gold miners being exempted from complying with the legislation. In Tanzania, although the government saw wisdom in ensuring that raw hides and skins as well as raw cashew nuts are subject to export taxes, the

same rationale was not appreciated for the minerals, which are all exported without any export tax, even if this is done in raw form.

An exception, however, is Zambia, which has realized that the economy is heavily dependent on copper, and encouraging the export of copper in its raw form would not result in high value for the economy. Thus, the country charges export taxes on copper, cobalt concentrates and other semi and unprocessed mineral ores at rates ranging between 1% and 15%. Thus, the Zambian tax regime in this regard can be seen to be encouraging value in the long term by promoting linkages with other sectors of the economy which stand to benefit once beneficiation starts. However, the continued export of copper in its raw form despite the measure can also reflect other limitations, which might not necessarily be due to the mining sector fiscal regime.

5.1.2. Ensuring increase in government revenues with rising profitability of mining activities

The manner in which the tax regime is structured in all the three countries is such that what accrues to government in tax revenue is also related to the profit that the mining firms are enjoying. There are two main direct taxation methods which

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would ensure that government revenues are related to profitability of the mining activity; royalties and corporate (income) tax. Given that almost all the minerals are exported in the three countries, royalties are directly related to profitability, as these are charged based on export receipts. All the three countries charge royalties, with Zambia having a regime which charges more than twice for open cast mining than underground mining. Opencast mining in Zambia attracts royalty charges of about 20% while underground mining is 8%. Ghana charges a flat royalty rate of 5%, while the Tanzania regime has multiple rates depending on the mineral, with the rate ranging from 1% to 5%. However, through the fixed royalties, all the countries have ensured that the government also gets a rising share of the revenue with a rise in production/exports, as required by the AMV.

The same trend is also true with respect to corporate income tax, which is also charged for mining firms in all the three countries at fixed rates, thus directly related to the income that they receive. Corporate tax charges in Zambia and Tanzania stand at 30%, while in Ghana it is charged at 35%. This is quite high and ensures that the government gets a share that is proportional to the rising profits.

However, corporate income tax can also be reduced due to the various tax incentives that are offered by the governments. For example, in Zambia and Ghana, the mining firms are also allowed capital deductions on mining equipment and related capital expenditure. Pre-production capital expenditure and environmental restoration costs are all deductible from profit before tax (100% deductible in Zambia and 80% in Ghana during

the first year, and 50% from the second year of production). The mining companies are also allowed to carry forward losses arising from prospecting and exploration in prior periods to knock off against future periods to a maximum of 5 years. This can see a mining firm not declaring any taxable profit for about five years, thereby denying the government any revenue.

Although in Tanzania efforts were made to tighten corporate tax revenue by ensuring that losses incurred in one mine cannot be used to offset profits of another mine even if both mines are part of the same legal entity, allowances on exploration and production rights could also limit corporate tax revenue for the government.

This implies that in general, the tax regime in the countries ensures that there is a rising share of government revenue with increase in profitability of the mining ventures in the three countries in line with the AMV. However, there is need for constant review to ensure that some of the incentives given to the mining firms do not unnecessarily cost the governments. For example, in Ghana, the law permits the Minister (acting on behalf of the President and the Government of Ghana) to enter into a stability agreement with mineral rights holder as part of a mining lease with the aim of protecting the mineral holder from adverse effects of new enactments that border on virtually all fiscal imposts – from taxes to exchange controls and fees. What this means is that when taxes are increased, companies with this kind of agreement will not be affected, however if the taxes are reduced such companies stand to enjoy the benefits of the reduction.

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5.1.3. Guaranteeing minimum government revenue in production periods and price cycles

Although the mining regimes in the three countries is designed in such a way that there is rising revenue in line with profitability, the royalties and income taxation from mining proceeds have not tried to ensure that there is a minimum amount of revenue that the government would always be assured of regardless of the production cycle. This implies that there is no guaranteed minimum revenue from the mining sector, such that if commodity prices continue to fall in the international market or there are production challenges in

the mines, the government might not realize revenue from the mining sector activities.

However, the governments can still enjoy guaranteed revenue through other forms of taxes, such as property tax rate, land rent, custom and excise duties which are not based on profitability or the level of production. In addition, the licensing regimes also assure some level of revenue for the three governments. These are paid regardless of mining sector outcomes. In Zambia, under Statutory Instrument 17 of 2013, the following are the annual payments that mining sector firms have to pay for renewing various licences:

Table 5: Fees Schedules for mines already operational in Zambia

Type of licence	Charge in fee units ⁶
Renewal of prospecting licence	10,000
Renewal of large-scale mining licence	160,000
Renewal of large-scale gemstone licence	160,000
Renewal of small-scale mining licence	15,000
Renewal of large-scale gemstone licence	15,000
Renewal of mineral processing licence	160,000
Annual operating permit (large scale)	5,000
Annual operating permit (small scale)	1,500
Mineral export permit	750

In addition, the Statutory Instrument also imposes various area charges, depending on the size of the ground that the mine occupies. These charges range from four to 200 fee units per hectare per year. Thus the charges can guarantee some revenue owing to the government even though there are price

fluctuations and crises in the economy.

The same trend is also true for the Tanzania mining sector regime. Mining sector firms have to pay renewal fees, which are not related to the economic environment as follows:

⁶ Under Statutory Instrument No. 8 of 2014, a fee unit is equivalent to 20 ngwee, or ZMW0.20.

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- i. Renewal of prospecting licence- US\$300;
- ii. Retention licence- US\$4,000;
- iii. Renewal of special mining licence- US\$5,000;
- iv. Renewal of mining licence- US\$2,000.

In occupying the area for mining activities, the government of Tanzania has set the rentals to be paid annually as "License Area" which is paid per square kilometre. For metallic minerals, energy minerals and kimberlitic diamond, building materials and gemstones, annual rent for first renewal of a prospecting license is US\$ 150 per square kilometre while annual rent for second renewal of prospecting license is US\$ 200 per square kilometre. Annual rent payable by a holder of a special mining license is US\$ 5,000 per square kilometre, while a holder of a mining licence for metallic minerals, energy minerals, gemstones and kimberlitic diamonds has to pay US\$ 3,000 per square kilometre. Having charges corresponding to the area mined is a positive development, as this is a form of guaranteeing some income.

In Ghana, renewal licence fees are also gazetted as follows:

- i. Reconnaissance licence- US\$15,000;
- ii. Prospecting licence- US\$20,000;
- iii. Mining lease- US\$100,000.

In addition, Ghana also charges ground rentals to mining companies, which are annual payment by mineral right holders to land owners through the Office of the Administrator of Stool Lands. This was increased from GHC0.5 per acre over the years to the current rate of GHC36.6 per acre.

This generally shows that, in all the countries, there are charges in licence fees that are guaranteed. However, direct taxation of income generally does not guarantee any minimum income for the government.

5.1.4. Ensuring robustness to changing circumstances

There have been a lot of changes to the fiscal mining regimes in the three countries, all intended to address shortcomings which were observed due to changing economic circumstances. The Zambia mineral regime is constantly reviewed every year through the annual National Budget Statement (fiscal policy). For example, in January 2015, there were sweeping reforms introduced for royalty payments to ensure that revenues from the mining sector are optimized. Several regulations, issued in terms of section 161 of the Mines and Minerals Development Act, 2008 have also been issued to adjust revenue systems, especially licensing procedures and costs, all aimed at enhancing revenue.

Between the period 2005 and 2014, the mining sector contribution to government tax revenue rose from 0.7% in 2005 to 27% in 2011 before declining to 12.4% in 2014. On average, the mining sector contribution averaged 11.4% between 2005 and 2014. In 2005, Pay As You Earn (PAYE) accounted for 85.5% of the mining sector tax revenue, whilst minerals royalties accounted for 13.2%. However due to a raft of changes in the mining sector fiscal regime, by 2014 PAYE contribution declined to 28% of the mining sector tax revenue, whilst contribution through minerals royalties and company taxes rose to 33.6% and 31.1% respectively. In nominal

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terms, mining sector tax revenue contribution amounted to ZMW294.75 million (about US\$84 million) in 2005 and this figure rose to ZMW5.27 billion (about US\$824.2 million) in 2014.

In Tanzania, the performance of the mining sector can also be attributed to various policy reforms that the government introduced over the years in response to changes in the economic landscape. These include the formulation of the Mineral Policy of 2009, to replace the Mineral Policy of 1997; the enactment of the Mining Act of 2010 (which repealed and replaced the Mining Act of 1979 and the Mining Act, 1998); and establishment of fiscal incentives aimed attracting both local and foreign investors. As a result, the contribution of mining sector revenue from the nine major mines to total revenue increased from 2.41% in 2001 to 4.41%, although this peaked at 10.97% in 2012. Export earnings from mineral export increased from an average of 1% of total export in 1997 to 52% in 2013.

The mining sector fiscal regime in Ghana has also been subject to several changes in line with developments in the local and international markets, with the aim being to come up with an optimal regime that maximizes revenue to government. In 2010, the government amended the Mining and Minerals Act, and fixed the royalty rate at 5%, instead of a sliding regime that ranged from 3% to 6%. The effective royalty rate for all the mining companies had been 3% prior to the amendment in 2010. Corporate income tax rate was also increased by 10 percentage points to 35%.

In Ghana, the various reforms do not appear to have registered a sustained impact in terms of the mining sector revenues relative to other sectors. For example, the mining industry paid GHC1 billion to the Ghana Revenue Authority (GRA) in 2011, representing 27.6% of total domestic revenues collected by the GRA. Although this increased to GHC1.5 billion in 2012 (27% of total domestic collections), there was a significant decline to GHC1.1 billion in 2013 representing 14.3% of total domestic collections. This might imply failure by the mining regime to be robust enough to respond to changing circumstances.

Thus, while there is evidence that the mining regimes in Tanzania and Zambia have been revised constantly and been able to respond to changing circumstances, the same cannot be said of Ghana, where the mining sector revenue contribution does not appear to have been sustainably increasing.

5.1.5. Designed to encourage long-term investments

In all the three countries, there are deliberate orientations on investment attraction in the mining sector. The tax incentives that have already been described are a good example. In addition, the mining leases are also given in perpetuity; there is little fear that the mining sector investor might end up losing the investment. This is also cemented by bilateral investment treaties as well as double taxation agreements, which mostly appear to be intended to benefit the investor than the government. The legal framework for the signing of Investment Promotion and Protection Agreements in Zambia is section 17(j) of the Zambia Development Agency (ZDA)

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Act of 2006. Zambia has signed twelve BITs with other countries since 1966. Zambia has also signed double taxation agreements with about 22 countries⁷ from around the world, including those where the parent companies of mining sector companies in Zambia are registered.

Ghana has entered into double taxation agreements and BITs with a number of countries throughout the world. The government of Tanzania has signed BITs with the Governments of Germany, Italy, Finland, South Korea, The Netherlands, United Kingdom, Sweden, Denmark, Canada, Switzerland, Thailand, China, Oman and Kuwait. On the other hand, the Government of Tanzania has entered into double taxation agreements with the Governments of United Kingdom, Italy, Sweden, Norway, Denmark, Finland, South Korea, Switzerland, Oman, Malaysia, Thailand, Canada, The Netherlands, and Kuwait.

A look at the terms of the BITs and the DTAs in the three countries generally show that these are intended to encourage long term investment into the countries, with some DTAs being applicable for as long as 10 years. As will be discussed later, this has been the source of revenue loss for the government, as these agreements can imply lower tax revenue for such a long period while the firms enjoy lower taxes. However, the regimes have a bias towards long term investment attraction into the sectors, especially foreign direct investment (FDI).

5.1.6. Loopholes for tax avoidance and evasion

The countries all still have a lot to do to ensure that the mining fiscal regimes are able to prevent illicit financial flows from the mining sector. However, there have been some efforts aimed at dealing with the issue. It is estimated that the Zambia Government is losing about US\$2 billion annually as a result of tax avoidance and transfer pricing by foreign companies. Efforts have been done, however, to put in place systems to curb them. This includes Section 97A of the Income Tax Act (Chapter 323 of the laws of Zambia) and the Income Tax (Transfer Pricing) Regulation, 2000 which deal with transfer pricing. The ZRA has embraced the OECD Transfer Pricing international standards – the Arm's Length Principle. Fines for transfer pricing include imprisonment term not exceeding twelve months; and or a fine. The financial penalties are prescribed by the Commissioner General, and these range from 17.5% to 35% for incorrect return on understated income amount.

Furthermore, late payment of tax (on mineral as well) is penalized by a fine of 5% per month of the amount due, plus an interest assessed on the outstanding tax payable at the Bank of Zambia discount rate plus 2% surcharge. Fraudulent filing of tax returns is fined at a rate of 52.5% of the amount. However, given the estimated amount of tax leakages, the extent to which tax leakages can be argued to have been reduced by these systems appears to be very minimal; hence they are not effective, overall.

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In Tanzania, the Tanzania Revenue Authority has also tried to have an effective regime as far as transfer pricing is concerned by coming up with transfer pricing guidelines; the income Tax (Transfer Pricing) Regulations, of 2014. The objective of these guidelines is to provide taxpayers with guidance about the procedures to be followed in the determination of arm's length prices and provide consistency in administration of the Income Tax Act, and its regulations taking into consideration the Tanzania business environment.

The Tanzania Minerals Audit Agency (TMAA) also plays a role in counteracting minerals smuggling and evasion to pay minerals royalty by stationing auditors at three major airports in the country: the Julius Nyerere International Airport (JNIA), Kilimanjaro International Airport (KIA) and Mwanza Airport (MA), in order to inspect and verify minerals mineral exports. This is conducted in collaboration with the relevant Government bodies, mainly the Minerals Department, the Tanzania Airports Authority, the Tanzania Police Force, the Tanzania Revenue Authority and the Immigration Department. During the year 2014, minerals worth TZS 832 million were seized in 27 minerals smuggling attempts at JNIA, KIA and MA. The events were reported to other government bodies for legal actions. Between July 2012 and December 2014, minerals worth TZS 15.92 billion were seized in 66 different minerals smuggling incidents at the three airports. Thus, systems to prevent leakages through illicit financial flows are relatively strong in Tanzania.

Ghana also adopted transfer pricing regulations in 2012, following a presentation by the Finance Minister in Parliament

confirming huge sums of money that the government loses in the sector through transfer pricing. However, stakeholders have complained that the regulations are too generic and in order to be effective, a customized version for the mining sector would be needed. Thus, measures to deal with leakages of minerals are still a challenge in Ghana.

5.1.7. Provisions for capital gains tax

Ghana charges capital gains tax based on profits on sale of mine assets or mine at 10%. The same is also true in Tanzania, where capital gains is computed as 10% of the gain in the case of a resident person and 20% of the gain in the case of a non-resident person. However, in Zambia, there is no tax on capital gains in general as well as for the mining sector. This generally implies that the Zambia government is depriving itself of some revenue in its desire to make the tax regime more favourable to investors, unlike the other two countries. Thus, from an AMV point of view, Zambia is not compliant.

5.1.8. Whether the countries are collecting what is due or owed

In all the three countries, illicit financial flows are reported to exist while some loopholes in tax payments are also reported. The three countries are therefore arguably not getting all that is owed. However, the issue of revenue leakages from the mining sector has already been discussed in section 5.1.6. What is also giving rise to the debate on whether what the countries are collecting is fair relative to what they are owed is also brought about by the issue of the flexibilities arising from the various

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tax agreements. For example, on 4 February 2014, Zambia and the United Kingdom signed a new double taxation agreement, replacing the old one to correct some of the observed loopholes, which had seen Zambia losing a lot of revenue. Zambia also has a problematic double taxation agreement with Ireland. The Zambia-Ireland tax treaty sets limits on how much a portion of income can be taxed by the 'source country' of the income (usually Zambia), and by the 'residence country' of the income's recipient (usually Ireland). While Zambia generally levies a 20% withholding tax on interest payments made to non-residents, the Ireland-Zambia tax treaty limits 'source country' tax on cross-border interest payments to zero. Thus, while this is just one example, it shows that Zambia has lost some freedom to always decide how much tax it levies on income generated in Zambia, due to double taxation agreements signed with various countries.

Both Tanzania and Ghana have preferred regimes of entering into agreements with mining firms, which could end up being tilted in the investors' favour. As already described, the MDAs in Tanzania can see some terms for mining firms in terms of tax payments being more favourable than what they could have obtained in comparative regimes. In addition, these terms can only be reviewed after the end of 10 years, which might see the firm being shielded from any new tax adjustments as long as the MDA has not yet expired. Ghana also permits the government to enter into a stability agreements with individual mining companies that can vary downwards some of the rates or altogether deny otherwise eligible mining firms from honouring certain tax obligations. The quest for more investment

appears to have deprived some tax revenue that would have been due had it not been for the various agreements and concessions. Thus, while the tax agreements are intended to make investment lucrative, the loss in potential revenues sees the countries being prejudiced.

5.1.9. Whether the country has adequate administrative capacity and institutions with clear roles / mandates to collect all revenues

In terms of institutions, in all the three countries, the tax collection system is similar, as there is a separate body tasked with collecting taxes on behalf of the government, through the Ministry of Finance. In Zambia, it is mostly the Zambia Revenue Authority that collects most of the taxes, especially those directly related to production. The same is also true in Ghana and Tanzania, where such role is performed by the Ghana Revenue Authority and the Tanzania Revenue Authority respectively.

Given that there are also other fees and payments due, all the three countries also have the ministry responsible for mines being also the body that is tasked with collecting fees for various licenses, while local authorities in the areas in which the mining firms operate also collect some minimal fees related to the areas that they enforce. In all the cases, the licence fees collected by the Ministry of Mines are remitted to the central government account administered by treasury. This system of arrangement appears adequate to collect all revenues due from the mining sector, although there are always loopholes that could be encountered, as already discussed.

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However, the various challenges encountered could also reflect some lack of administrative capacity in these institutions. This is particularly in the area of contract negotiation as well as the general issues that are needed to comply with the AMV. Across the three countries, efforts have been made to capacitate officials to adequately discharge their roles. In Zambia, Capacity building programmes have been put in place under a comprehensive reform programme, Public Expenditure Management and Financial Accountability Reform Programme, (PEMFA), which was in effect between 2005 and 2012. However, this program left a lot of issues unresolved. For example, Zambia still faced challenges in public financial management which could also be attributed to capacity shortcomings in fundamental elements of Public Financial Management. In mining, the Ministry of Mines, Energy and Water Development had limited capacity to monitor, audit, verify and supply production data. Such capacity is still lacking to date, although there is currently an ongoing World Bank supported programme, 'Public Financial Management Reform Program Phase 1 (P147343)' which commenced on 11 April 2014 and is expected to end on 31 December 2017.

Tanzania appears to have developed more serious efforts towards capacity building of officials with the objective of complying with AMV requirements. For example, in 2014, the UNDP Country Office in Tanzania received a formal request from the government of Tanzania through the Ministry of Energy and Mining (MEM) for support in formulating a CMV, in line with the requirements of the AMV. This saw the UNDP and the AMDC acting as facilitators for the CMV, with Minister of

Energy and Mining as the lead government institution. The CMV is now at an advanced stage, although it was supposed to be launched through multi-sectoral stakeholder High-level Roundtable and Dialogue on Extractives in Tanzania on 11 March 2015.

Earlier, in 2012 the Ministry of Energy and Minerals (MEM) of the Government of Tanzania (GoT) also requested the Swedish International Development Agency (SIDA) support for a project to strengthen the capacity of MEM towards sufficient management of the energy sector. This saw the Sustainable Development Strategies Group (SDSG) and the International Institute for Sustainable Development (IISD), in partnership with the Trade Policy Training Centre in Africa (TRAPCA) and the World Bank, conduct a five-day training seminar on the negotiation of mine development agreements. The workshop, designed for senior government officials who are involved in mining contract negotiations, took place from May 26 to May 30, 2014 in Arusha, Tanzania. The seminar was aimed at enhancing technical knowledge and skills of relevant government representatives in Africa on the effective negotiation of mine development agreements with foreign investors.

In Ghana, the weak capacity of state agencies responsible for collecting taxes, incentive problems, inadequate transparency and the aggression with which foreign multinationals are attributed to the loopholes in the tax collection system. An example is the case with transfer pricing regulations where the law obliges multinational companies (including mining firms) to provide details of each and every transaction that implicates a transfer price. However, these details are not being

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pursued by responsible state officials, given the volumes of data involved and their limited capacity. This generally reveals some capacity building requirements to ensure that the state agencies have the necessary capacity to adequately perform their roles.

5.1.10. Whether the country has oversight audit institution(s) and mechanisms

All the three countries have put in place institutions that are intended to audit mining sector firms to ensure that what they pay as revenue is in line with what they owe. This is more pronounced in Tanzania, where an independent agency, the TMAA was specifically set up for providing those services. The TMAA has also turned out to be successful; the audit of financial records and tax review conducted by the TMAA in 2014 alone resulted in collection of unpaid Government revenues as follows:

- i. Withholding tax amounting to TZS 905.5 million which was not paid from payments made to mining technical services providers;
- ii. Royalty amounting to TZS 761.3 million and empowerment fund amounting to TZS 336.7 million;
- iii. Skills Development Levy (SDL) amounting to TZS 150.9 million
- iv. Service Levy amounting to TZS 2.77 billion.

In Ghana, the Ghana Customs, Excise and Preventive Service (CEPS) is the state organization responsible for the collection of taxes levied on imports, exports and some locally manufactured goods. In addition, CEPS

also ensures the protection of the revenue by preventing smuggling by physically patrolling the borders and other strategic points, examination of goods and premises, as well as documents relating to the goods. However, the effectiveness of CEPS in Ghana is questioned, as it is generally felt that the institution need to do more to effectively perform its roles.

For example, officials from CEPS are usually not present in the bullion rooms where they are supposed to be to authenticate the documents, but are rather called in to validate the records when the boxes are being sealed. Personnel of CEPS posted to the mines, who are supposed to be changed on regularly basis, have been at same mines for nearly a decade, an obvious misnomer and a reflection of the broader tax compliance challenges in Ghana's mining sector.

In Zambia, there is no independent agency that has been tasked with this role, but the Auditor General is expected to perform this role in addition to the Ministry of Finance. In addition, the ZRA, the Office of the Auditor General, the Parliamentary Public Accounts Committee and the Committee on Economic Affairs and Labour also review mining companies' production statistics and revenues. However, this situation is not ideal, as these government institutions also have other responsibilities beyond mining. It is therefore not surprising that some concerns have been raised about the delays by the AG's office in producing the audit reports, a lax attitude towards follow up action to deter financial malpractices and less pro-activeness on the part of the ZRA and the Ministry of Mines to ensure that mining companies strictly adhere to timeframes for reporting information. This is a gap that needs to be filled in Zambia.

5.1.11. Whether the fiscal regime facilitates and encourages mineral economic linkages

The three countries continue to be characterized by export of mineral commodities in their raw form, with limited beneficiation and value addition which would enhance mineral economic linkages. Ghana has significant potential to enhance mineral economic linkages in the bauxite-aluminium industry as it has substantial reserves of bauxite but has no refinery, such that all the bauxite produced are exported in their raw state to be refined. Ghana then imports refined bauxite (alumina) to feed a smelter which has been largely underutilized over the past decade or two, amidst periodic shut downs. This is partly associated with power availability. Thus, the challenges with the smelter also limits the economic linkages which were anticipated when the smelter was established. Ghana also has potential for mineral economic linkages in the limestone and clay resources, which can be used for the production of cement and tiles respectively, to feed the construction industry in the country. However, despite the potential, Ghana continues to depend substantially on gold mining, which continues to lead export commodities in foreign exchange earnings as well as serves as a major source of government revenues. The gold is mostly exported in semi-processed form, thus little linkages with other sectors of the economy. Thus, the tax regime does not appear to have been able to enhance the economic linkages.

Tanzania has, however, made strides to ensure that minerals mined in Tanzania gain more value through value addition. The Mineral Policy of 2009 encourages value addition

activities such as mineral beneficiation, gemstone cutting and polishing, jewellery making and stone carving. Taking advantage of the policy pronouncement, Tanzania has registered growth in gemstone cutting centres, copper smelter plants, rock cutting and polishing facilities (dimension stones). One of the significant developments in the country is the Arusha Gem Show, an annual international gem show established in Arusha in 2012. The purpose of the show is to encourage competition in value-addition infrastructure so that the country gets more direct benefit from the mining sector, including employment creation. Value addition also cushions Tanzania against falling commodity prices. The focus on value addition industry places Tanzania ahead of many African countries, which are still primarily focused on exporting unprocessed mining products, contrary to the AMV aspirations. This also enhanced revenues from the mining sector

In Zambia, although the export of copper in its raw form attracts an export tax as a strategy to discourage raw exports, the mining sector fiscal regime has not done much to ensure that beneficiation and value addition is easy. Thus, the country continues to enjoy limited benefits as far as the economic linkages from the mining industry is concerned, due to absence of any other tax incentives to make copper refinement attractive.

5.2 Other challenges and opportunities

While all the three countries appreciate the need to conform to the key provisions of the AMV, there are general challenges within the systems that make it difficult for the AMV to

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be fully mapped within the countries' mining regimes. Common challenges include the limitations in the capacity of state agencies responsible for collecting taxes to ensure that there are no loopholes for tax evasion as well as illicit financial flows. As already discussed, all the three countries are still grappling with the issue, although they have also come up with some measures which are currently at different stages of being implemented. Secondly, the issue of incentives in the mining sector regime is also a common challenge. There is a need to ensure that what the government loses out through foregone revenues due to tax incentives is also commensurate with the anticipated benefits from more investment. However, most of the incentives, including the various bilateral agreements that are signed focusing on taxes, normally tend to be heavily skewed in favour of the foreign investors. Thus, one of the biggest challenges is the capacity to negotiate during the agreements to ensure that what the

countries get is optimal. The ability to monitor and evaluate signed deals to assess whether the country is being prejudiced appears to be lacking. Thirdly, the countries also appear to have missed out as far as enhancing value addition and beneficiation is concerned, which is one of the key focus areas of the AMV. All these challenges have resulted in government receiving far lower than potential.

However, there are also so many opportunities which the countries could leverage on to ensure that they work towards meeting the AMV aspirations. Firstly, all the countries are endowed with mining resources and investors are always bound to come to invest. Thus, the agreements with investors or their countries of origin should not be done on desperation basis by the African countries as they have the resources. In addition, there is still room for improving the mining sector fiscal regimes in line with the AMV aspirations, as currently the falling commodity prices require value addition.

6. Mapping with the AMV: Revenue use and Management

6.1. General comparison with the AMV

6.1.1. Whether the resource revenue management system is well-established

In all the three countries, the management of the mineral resources is similar, with a Ministry responsible for mines being the central player in the operations of the mines while an independent government agent collects the taxes. The management of the revenues collected is also similar, as this is generally transferred to the consolidated fund, whose allocation is determined by treasury through the national annual budget. In all the countries, there is no separate management of mining sector revenue, including its allocation, outside other revenue heads. Given the importance with which the AMV attaches to mining sector revenue management, African countries need to work out a system where mining sector revenue is separately accounted for to ensure that the mining sector earnings are optimal. The three countries are all exposed to illicit financial flows from the mining sector, while the issue of tax avoidance, facilitated by bilateral agreements, also appears to suggest that the revenue management system might not be well established as expected under the AMV.

6.1.2. Whether there are comprehensive long-term development plan/strategies

The long term development strategy as envisaged under the AMV is the establishment of a country mining vision for each country. As already described, the CMV was developed as a tool to facilitate the domestication of the AMV at country level. Zambia is yet to put in place a CMV and the Revised Sixth National Development Plan, which covers all the sectors of the economy, is the long term development strategy that currently governs the economy, together with the mining sector. However, given that the focus of this plan is also in other sectors of the economy, the manner in which mining sector development strategies as envisaged under the CMVs, such as fiscal regime, geological information system, human and institutional capacity, mineral sector

governance and linkages are not necessarily addressed in a comprehensive manner.

Tanzania and Ghana are in the process of establishing a CMV through the technical assistance of the AMDC, for which some progress has been made. While there could be limited progress as far as the actual reforming of the mining fiscal regime as per the AMV requirement, it is encouraging that this is work in progress. Thus, while the CMV is not yet in place, there are serious efforts on the ground to ensure that this is achieved. However, the fact that this is not operational as yet also implies that the situation in the two countries is currently not very different from the Zambia situation as far as development of a long-term mining sector development strategy is concerned. This is therefore a process which all the three countries should remain seized with.

6.1.3. Whether the country's budget system is linked to the mining sector national development plan/strategies

Given that the CMVs, which would serve as the mining sector national development strategies in the three countries are not yet in place, it is not possible to assess the extent to which the budget system is linked to them. However, in all the three countries, the national budget system stands guided by a legislative process, where treasury proposes allocations and parliament approves it. One of the manners in which parliament exercises its oversight role is to ensure that the Minister of Finance allocates funds for projects in line with Government's priorities, which are normally set in the development plans of the country. Thus, in the absence of operational CMVs, currently the budget system is linked with the general development strategies in the three countries.

6.1.4. Whether clear legal rules on spending and savings of mineral revenue exist

In all the three countries, there is no separate account for mining sector revenue given that mining revenue is just part of the consolidated fund. Thus, it is difficult for the government to impose any rules on how revenues from the mining sector can be separately spent.

However, Tanzania has gone a step further by providing for a local levy that is charged to mining companies at 0.3% of annual turnover paid to the local government authority where the mine is located. This levy is intended to develop the areas in which the mines are located and thus can be regarded as a rule on how mining sector revenues can be spent. It

is not clear, however, whether systems are in place to ensure that there is full accountability of proceeds from the local levy to ensure that the revenue is not used for other purposes. The same is also true for Ghana, where a portion of royalties that is returned to Municipal and District Assemblies through the Mineral development Fund to be used for developmental projects following a guideline produced by the Minerals Commission.

These are clear guidelines on spending in Ghana and Tanzania for some part of the mining revenue, which can also be replicated in Zambia.

6.1.5. Investment of a reasonable proportion of resource revenues to support sustainable development

As discussed in the previous section, the mining sector resources are part of the general resource envelope to support programmes. Thus, it is not possible in all the three countries to track a greater portion of the mining sector revenue resources with a view to assessing whether the resources from the mining sector are being used to support sustainable development.

6.1.6. Reasonable safeguards for future generation to benefit from resource revenues

The mining resources are finite and there is need to ensure that future generations are not denied the opportunities for benefiting from the resources mined. One example of safeguarding future generations' interest is through establishment of a sovereign wealth fund, which is specifically mentioned by

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the AMV Action Plan. It can be established that Ghana and Tanzania have made efforts at having sovereign wealth funds in the petroleum and natural gas sectors respectively. Thus, since these also qualify as natural resources, the two countries can be seen to have made some efforts towards ensuring that there is value for the country from mineral resources in the long term.

However, mineral resources are mostly viewed outside petroleum and gas, as these commodities are not found in all the countries. Despite efforts of establishing the sovereign wealth funds in these sectors, both Ghana and Tanzania also join Zambia in having made little efforts to ensure that such a scheme also exists for other minerals. One of the focus areas of the AMV, as stipulated in the 2011 Action Plan is for countries to explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds. This is also given as a short term measure, implying that based on the AMV aspirations, the measures should have been introduced by now. Thus, all the three countries fail with respect to minerals in general based on the AMV Action Plan guidelines.

Ghana also has National Reconstruction and Fiscal Stabilization Funds, where from time to time the government imposes a tax on selected companies for a fixed period of time and for identified purpose. Mining companies have usually been part of the selected entities that are affected by these taxes. The resources from the funds are also used for economic stabilisation as well as national reconstruction, which can also be of benefit to

future generations. Ghana and Tanzania can, therefore, use the experience they have to come up with frameworks for the rest of the minerals. Unlike Zambia, these countries have a starting point.

6.1.7. Provisions of public accountability and transparency

A critical issue in the management of mining sector revenues is the issue of transparency in revenue that accrues from the mining sector. The three African countries have signed up to the Extractive Industry Transparency Initiative (EITI) to improve transparency and accountability in the extractive sector. In May 2009 Zambia became an EITI candidate country, underwent its first validation by the EITI Board in 2011 and in September 2012, following a review by the EITI International Secretariat, was declared an EITI compliant country. Ghana signed onto the Extractive Industry Transparency Initiative in 2003, with the country's first audited EITI report published in 2007 before the country was declared EITI Compliant in 2010. Tanzania signed to the EITI on February 2009 but on September 2015, the country was deemed not EITI-compliant. Thus, transparency with the use of mining sector resources could be an issue in Tanzania, which can also reflect poor management of the resources. However, even though both Zambia and Ghana are EITI compliant, the countries still lack of legislative provisions that oblige companies to comply with the EITI process, as there are no sanctions for non-compliance and non-reporting. Efforts are still underway to formalize the EITI process through a legal instrument requiring timely cooperation and reporting by companies and Government

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agencies. Thus, the issue of transparency in mining sector revenue is still an issue in all the three countries.

6.1.8. Reporting requirements and guidelines on managing resource revenues

The country reports do not show clear reporting requirements and guidelines on managing mining sector revenues. In Zambia, concerns have been raised due to the following issues:

- i. The ZRA which is responsible for collecting all mining royalties and taxes does not publish any data on royalties or other taxes paid on its website. In practice, ZRA does make aggregated data on mining revenue available upon request, but does not disaggregate by type of revenue or mine/ mining company;
- ii. The Ministry of Finance and National Planning produces an annual and mid-year economic report which includes data on production volumes for copper, cobalt and gold, but most of the reports are not published online;
- iii. The Ministry of Mines does not publish any information on a regular basis. Under the Minerals Development Agreements (MDAs) terms, mining companies are supposed to produce and present comprehensive financial reports on a quarterly basis to the ministry of Mines, but in practice this does not happen on a regular basis and if it does they are not released to the public.

Reporting issues is also a challenge in Tanzania. In 2015, Tanzania was deemed not EITI-compliant because of delaying to publish the Fourth (2012/2013) Report on time as required by the EITI Standard. Tanzania's compliance is hampered by some delays in reporting the reconciliation of revenue figures on time as stipulated with EITI. This also reveals some challenges with reporting.

6.1.9. Opportunities for public oversight

The issue of transparency in the mining sector has generally attracted a lot of interest from NGOs in the three countries. There are a lot of NGOs whose main area of focus include issue of transparency in revenue use as well as the granting of mining claims. In all the three countries, public oversight as far as a clear understanding of how the granting of mining rights is done remains a challenge. However, it is encouraging that in all the three countries revenues from the mining sector are allocated through the general national budget process, where parliaments exercise oversight roles. This implies that *ad hoc* allocations of mineral revenues are not possible in all the three countries.

In all the three countries, there is still room for improvement when it comes to transparency. The AMV requires competitive and transparent mineral concession systems to be implemented. While there are a lot of regulations governing the procedure for an investor to obtain a mining license, the mineral concession regime in the three countries is not very transparent. It is not too clear regarding the factors to be taken into cognisance before granting a concession to the investor, especially if there are more than

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two investors interested in the concession. To enhance transparency to the public, there is need for such a system to be developed, which would remove any doubt to the public that the decision to grant the concession was strictly on merit without any undue influence.

6.2. Challenges and opportunities

In all the three countries, there is still appreciable level of discontent among the citizenry with respect to benefits that accrue to communities and countries from the extraction of nationally owned mineral resources. There are no policy requirements in place that force mining companies to engage in development activities that create jobs or ensure that mining communities benefit from the mining activities that take place within their areas. While government might be justified in ensuring that a certain proportion of mining sector revenue should be channelled back into the communities from where it came, in Tanzania this might not be fair. The majority of the mining revenue comes from just six out of a total of 117 local districts and there are more districts which are far poorer than those in which mining takes place. Thus, using revenue from the mining regions to cater for those in the poorer regions is reasonable.

However, although policy is not explicit, government also encourages mining firms to

invest in the areas of their mining communities through corporal social responsibility. This has seen mining communities enjoying some benefits. For example, mining companies have also been investing some of their profits in corporate social responsibility to increase their visibility, acceptance and social ties in the communities. Some recognized efforts have been in the areas of education, health, water and roads. Tanzania has actually gone a step further by way of the Mining Policy, which also has a section focusing on 'promotion of relationships between mining companies and communities surrounding mines.' This policy encourages mining companies to contribute significantly to the development of the local communities through internal corporate social responsibility policies.

The countries are also characterized by bureaucratic red tape in the issuance of mining rights, which make it difficult for investors to participate in the mining industry. There is also lack of clearly stipulated appeal procedures during disputes over mining licences and rights, which also make the regimes less predictable. The absence of an appropriate governance mechanism have resulted in failure to impose a mining fiscal regime that ensures equitable distribution of resource rents between the government and the mining companies, particularly windfall rents.

7. Mapping Of the AMV At the REC Level

The AMV requires that at the regional level, RECs should;

- i. review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue packages in a manner that does not discourage mining investment;
- ii. develop mineral taxation guidelines for implementation at the REC & national levels;
- iii. develop typical financial models for mineral projects for member states and run training workshops at REC level;
- iv. compile best practice guidelines on mineral revenue management and deployment for implementation at the REC & national levels.

Compliance with the AMV at the regional level is still work in progress for all the three regional economic cooperation groupings as none of them has so far been able to meet these four requirements. However, the ECOWAS is some steps ahead of the EAC and SADC, given that it has already produced the ECOWAS Minerals Development Policy (EMDP), which is a platform that the member countries could use to harmonise their mining sector development policies. The EAC still has a lot of work to do, given that so far it has failed to come up with a protocol to govern the mining sector at the regional level. The refusal by Tanzania to sign the protocol is the major stumbling block. Although the SADC has a Mining Protocol and the Regional Harmonisation Framework of 2004, these were both done before the AMV and there have not been a regional strategy done as a response to the AMV. This state of affairs shows limitations at the regional level to comply with the AMV.

However, as a result of pressure from the AMV process, the absence of

regional frameworks have not stopped the secretariats at the REC level to undertake activities aimed at ensuring that best practice guidelines on mineral revenue management are established for implementation at the national levels. At the EAC level, a programme to facilitate the development of extractive and mineral processing industries is currently being formulated. One of the focus areas is reviewing of policies and laws governing the extractive industries and mineral processing to support extractive industry development and mineral value addition. This also enhances revenue collection if achieved, hence is in line with AMV aspirations. In addition, efforts towards the harmonization of mineral policy and regimes in Partner States focusing on mineral royalties to Government and communities; taxation regimes; benefits for the communities during and after mining; role of the communities, local authorities, central government and the mining companies and marketing of minerals is in line with the objectives of the AMV of optimising revenue from the mining sector.

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At the ECOWAS, the ECOWAS Commission has been engaging relevant departments and agencies of Member States on the best approaches for the implementation of the EMDP. Further, the ECOWAS Commission is undertaking a number of institutional restructuring to enhance its capacity to engage Member States on the implementation of the EMDP. The Energy and Mines Department at the ECOWAS has been beefed up and additional personnel are being hired to support the activities of the department. The EMDP, which envisions harnessing the enormous resource endowments of the Community to facilitate sustainable economic growth and integrated socio-economic development in the region, appears to be in the same lines as the AMV broadly, even though a lot of efforts are required.

At the SADC level, although there has not been much done towards AMV compliance, the existing framework has a lot of complementarities with the AMV. The regional harmonization framework that was developed seeks to align fiscal regimes to best performing countries so as to attract investment and avoid sterilisation of the

resource sector. The harmonisation framework encourages member states to minimise the likelihood of double taxation when entering into tax treaties with international investors, which is also in line with the AMV Action Plan. The framework also recommends that member states need to introduce transfer-pricing rules based on OECD (arm's length) principles, which is also in line with the AMV objectives. The harmonisation framework also allows the SADC countries to introduce mineral specific royalties as compensation for mineral depletion while implementing a sliding scale mechanism to target a portion of the mineral rents generated by highly profitable ventures. This is also in line with the AMV. In addition, the SADC harmonisation framework also recommends that countries should avoid tax holidays but only give these for investment projects that meet specific national policy and development objectives, such as value-addition. This is also within the same spirit as the AMV.

Thus, at all the three RECs, compliance with the AMV is still an issue that requires attention. However, existing efforts and strategies also reflect that all hope is not lost, as these appear to be in the right direction.

8. Conclusion

The mining fiscal regime in the three countries generally shows that they have systems in place to ensure that they improve national capacity to physically audit mineral production and exports, which is implemented by generally trained inspectors. This is in line with the AMV. Over the years, the countries have also reviewed their mining fiscal regimes with the objective of increasing fiscal revenue collected. This has also significantly increased revenue from the mining sector. While the increase in tax collected could also be due other factors, the fact that the increase in revenues in all the three countries coincided with the period when more tax reforms in the mining sector were introduced shows the impact of the tax measures. This is in line with the AMV Action Plan objectives of reviewing mineral regimes in terms of optimising revenues.

The three countries have also developed several programmes intended to build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws. The capacity to monitor, audit, verify and supply production data, however, still needs to be enhanced. Tanzania has benefitted more from these programmes as far as meeting the AMV aspirations is concerned as some of these were actually coordinated by the AMDC, an institutions which was established to spearhead compliance with the AMV.

The three countries have also signed a number of BITs and double taxation agreements with other countries. However, despite signing them, the countries have managed to ensure that minerals are taxed at the point of extraction, and are thus compliant with the AMV. However, the double taxation agreements have a number of loopholes which need to be revisited to ensure that the countries realise their full potential in getting revenue as per the AMV objectives.

A major challenge in the three countries is how to develop systems for evaluating the components of the tax regimes for leakages, losses and tax avoidance & evasion, which are generally due to rampant leakages and losses through illicit financial flows. Thus the AMV recommendations on systems to curb illicit financial flows are yet to be fully adopted. The countries should continue to explore strategies to put such systems in place. Reviewing the double tax agreements can also be done as a strategy to dealing with illicit financial flows. This can also worsened by bureaucracy in the issuance of mining rights and lack of clearly stipulated appeal procedures for issues to do with mining licences and rights.

With respect to revenue use and management, Zambia is yet to put in place strategies for investing windfall earnings and mineral rent into sovereign wealth funds, including stabilization funds and infrastructure funds. Ghana and Tanzania have fully functional sovereign wealth funds in oil and gas sectors. Ghana also has stabilisation funds, used mostly for reconstruction purposes. However, the

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bulk of the minerals, which are also finite, like gas and oil, are currently not contributing significantly to the welfare of future citizens in all the three countries. Given that this was identified as a short term strategy under the AMV, the developments on the ground have been too slow for this expectation to be met within the set time frames.

Zambia has also failed to ensure, through policy and legislation, that there are some rent distribution systems for allocating part of mineral revenue to communities near mining areas and the local authorities. Tanzania and Ghana have however tried to ensure that such a system is in place, through a levy in Tanzania and a share of the royalties in Ghana. Thus, Tanzania and Ghana have tried to act in line with the AMV aspirations, which Zambia is yet to do.

In all the three countries, some mechanisms to ensure that the mining sector revenue management capacity is enhanced are needed. There is need to speed up the process of ensuring that the EITI process is made mandatory through a legal instrument requiring timely cooperation and reporting by companies and Government agencies.

There is need to improve reporting guidelines for institutions responsible for assessing, collecting and use of revenues.

At the regional level, there have not been many achievements as far as AMV domestication is concerned. The review of the fiscal environment to come up with guidelines for optimising mining sector revenue has not yet been done. Mineral taxation guidelines for implementation at the REC & national levels have also not been developed. In addition, typical financial models for mineral projects for member states also need to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels have also not been done. These are the key expectations under the AMV for RECs to do as part of the AMV compliance process.

Based on these observations, a scorecard has been prepared to show the extent to which these countries meet the compliance criteria as stipulated in the AMV Action Plan, 2011. This, together with the explanation on how each country is rated, is shown in Appendices 1 and 2.

9. Recommendations

Recommendations for the three countries to enhance the compliance process with the AMV include the following:

Ghana

- i. State departments and agencies must be re-oriented (by regional and continental bodies) to view the state machinery as developmental vehicle to support the AMV. Further there is need to increase their capacity (expertise, personnel and technological) to enable them implement the AMV as expected. The government must therefore reconsider increasing support to these agencies to ensure the protection of government's (and therefore the people of Ghana's) stakes in the mining sector;
- ii. Continental agencies responsible for the coordination of AMV implementation activities must seriously consider supporting public awareness engagements and campaigns to increase the pressure on state agencies as well as respond to threats by mining companies. This must be well planned and executed to ensure that all the key social and economic constituencies in the country and across the continent are engaged in an on-going process;
- iii. Citizens and citizens groups in Ghana must increase their level of awareness of the AMV agenda and increase their collaboration to establish an influential platform to

support the implementation of the AMV;

- iv. Citizens groups and governments must also gather the courage to subordinate other parallel initiatives that can either dampen or conflict tenets of the AMV. This, in turn, would require that the AMDC is well supported (financially and otherwise) to undertake its functions with greater level of seriousness that can attract other stakeholders to the AMV table.

Tanzania

- i. Tanzania needs to maintain the current attitude towards the AMV as seen by current efforts towards developing a Country Mining Vision (CMV) formulated along the AMV. The momentum that had arisen from current efforts being done at government level in collaboration with the AMDC need not be lost;
- ii. Tanzania needs to continue to strengthen the capacity of the Tanzania Minerals Audit Agency (TMAA) so as to ensure continuity in the mineral audit as well as consistency in the auditing capacity with evolving strategies at illicit financial flows that are constantly being used by players in the mining sector;

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- iii. Tanzania should also continue to utilise the AMDC in other areas on mining sector revenue, including the capacity to negotiate mineral concessions as well as the best regime with respect to bilateral investment treaties (BITs) and double taxation agreements (DTAs) to ensure that the country attains the optimal mining regime as envisaged under the AMV;
- iv. Tanzania should also establish a sovereign wealth fund for other minerals in addition to the gas sector. Other minerals are critically important, as the rationale for the gas sector is equally applicable to the rest of the minerals;
- v. Tanzania should develop a strategy to ensure that local communities, who are disadvantaged by mining activities, have access to both sustainable alternative livelihoods and the mineral wealth so generated from their localities. Part of the mining revenue can be invested back into the community through infrastructure projects intended to enhance better health, education and water and sanitation.

Zambia

- i. There is need to enhance the capacity of Government officials to monitor, audit and verify mining sector production data and revenues. Capacity building should be structured in a way that takes into account the structural shift in the mining regime as envisaged by the AMV, where resources need to benefit the country more than the investor. Such capacity include training, provision of audit/monitoring equipment, as well as, recruitment of qualified and experienced professional staff.
- ii. Double taxation agreements that have been signed should be revisited to prevent further revenue leakages through the practice while ensuring retention of revenue in the country an objective aspired by the AMV. On the other hand, any new double taxation agreement signed should be designed to ensure that tax liability in Zambia is not unnecessarily eliminated as the mining resources are being mined;
- iii. Zambia need to develop systems to curb illicit financial flows from the mining sector as per the AMV recommendations;
- iv. As a way of improving its mining fiscal regime and attracting investors, Zambia needs to minimise bureaucracy in the issuance of mining rights, and ensure that there are clearly stipulated appeal procedures for issues to do with mining licences and rights;
- v. Zambia should put in place strategies for establishing sovereign wealth funds to ensure that future generations are catered for from the finite mining resources which are exploited by mostly foreign investors;
- vi. Zambia should tighten its policy and legislations to ensure that the rent distribution system allocates part of mineral revenue to communities near mining areas.

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Regional Level

Recommendations that can be made with respect to the SADC, ECOWAS and EAC include the following:

- i. There is need for a review of the fiscal environment to come up with guidelines for optimising mining sector revenue.
- ii. The SADC Secretariat should also develop mineral taxation guidelines for implementation at the national level.
- iii. Typical financial models for mineral projects for member states also need to be developed together with guidelines on mineral revenue management for implementation at the regional and national levels, as per the AMV recommendations.
- iv. Enhance efforts at compiling best practise guidelines on mineral revenue management and deployment for implementation at the REC & national levels.

Appendix 1: Basis of Assessment for Scorecard on the Three Countries

Expected Activity under AMV	Ghana Status	Tanzania status	Zambia Status
Improve national capacity to physically audit mineral production and exports.	Installation of Assaying equipment at Takoradi laboratory and the Kotoka International Airport.	The national capacity to physically audit mineral production and exports was enhanced by a dedicated mineral audit agency, the TMAA. This has resulted in identification of unpaid taxes owed, while also helping build the capacity of mining companies to calculate tax revenues due.	Systems are in place as required by the AMV, although there are still challenges being experienced.
Review mineral regimes in terms of optimising revenues.	Review of key fiscal imposts (such as royalty fixed at 5% and corporate income tax raised to 35%).	Tanzania undertook a lot of reforms in the tax systems since the Mining Policy of 2009, which has seen the contribution of mining tax revenue to total tax revenue increasing from 2.41% in 2001 to about 4.41% in 2014, despite falling mineral prices.	Done and revenue increased over the years.
Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	Some policy officials have undergone various fiscal related capacity building and skills enhancing workshops in the country and outside of the country.	There has been a lot of capacity building initiatives intended to improve the capacity of government officials to negotiate mining contracts and monitor compliance with taxation laws. Some of these programmes were actually the AMDC, an institution established to drive the AMV programme.	Policy makers have been attending capacity building programmes. However, some needed capacity is still lacking. Since this is expected over the short, medium and long term, Zambia has complied with the AMV as this is work in progress.

Expected Activity under AMV	Ghana Status	Tanzania status	Zambia Status
<p>Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.</p>	<p>Stability agreements and other agreements in the mining are under review. Negotiations with Newmont have concluded awaiting parliamentary approval.</p>	<p>Tanzania has made most of the mining licenses renewable, and at renewal, new terms are always negotiated depending on the mining policy at the time. However, the MDAs might make some firm immune to any renegotiation for a period of up to 10 years.</p>	<p>This has been limited as far as re-negotiating contracts with existing mining companies is concerned. However, new mining companies continue to experience revised conditions depending on the new fiscal thrusts. Thus, since this is also to be achieved within the medium term, Zambia is on course.</p>
<p>Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).</p>	<p>Transfer pricing regulations have been passed</p>	<p>The Tanzania Revenue Authority has transfer pricing guidelines, while the income Tax (Transfer Pricing) Regulations of 2014 was established to curtail illicit financial flows through transfer pricing. TMAA also plays a role in counteracting minerals smuggling and minerals royalty evasion.</p>	<p>This is still an area where Zambia is facing some challenges. However, some measures to deal with transfer pricing are in place and since this is also a medium term achievement, this could be achievable by 2021.</p>
<p>Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction.</p>	<p>There do not seem to be any efforts on this issue. There are however reports that the parliament is considering ratifying a double taxation agreement between Ghana and Denmark.</p>	<p>Tanzania has signed BITs with about 14 countries, even though discussions for more are currently underway. Tanzania has also signed double tax agreements with 14 countries. The taxation system in Tanzania is however still designed to ensure that tax is paid in Tanzania, even if foreign investors are involved. However, terms of the signed agreements have not been regularly reviewed.</p>	<p>Based on the number of double taxation agreements signed and implemented by Zambia, this has been achieved and outstanding issues are expected to be dealt with in the medium term.</p>

Expected Activity under AMV		Ghana Status	Tanzania status	Zambia Status
Build capacity & systems to auction mineral rights where applicable.	Workshops have been organized for relevant state officials.	While the mining license regime is clear, factors used before granting a concession to the investor, especially if there are more than two investors interested in the concession, are not spelled out. It is difficult to dismiss undue influence as playing a role in decisions to grant concessions.	The issue of transparency in mineral concession is not likely to be achieved by 2016, which is the short term target under the AMV. Thus Zambia is likely to miss this target.	
Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds	There are no visible efforts on this issue.	Tanzania is now at an advanced stage in establishing a sovereign wealth fund in the gas sector. However, there is need for sovereign wealth funds to also be established with respect to other minerals	A SWF is not likely to be in place by 2016 in Zambia given the manner in which this has dragged on with little movement. Thus the AMV target is likely to be missed	
Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	The old rules still apply.	The mining management regime is such that a local levy is charged to mining companies at 0.3% of annual turnover, which is paid to the local government authority where the mine is located. This shows that the mining management regime has tried to ensure that there is some benefit to the local authorities and communities in the mining areas, as specified by the AMV Action Plan.	There are no legal frameworks which force mining firms to ensure that the communities they operate in benefit. This is also not likely to be in place by 2016 as per the AMV target.	

Expected Activity under AMV		Ghana Status	Tanzania status	Zambia Status
Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	Some voluntary mechanisms (notably CSR initiatives) are being implemented. The government has also supported some initiatives, especially plantations in the Western Region.	Tanzania does not have a policy strategy to encourage mining firms to prioritise local communities in employment decisions. In addition, there is no specific requirement for the mining firms to use part of the mining revenue to invest back into the community to enhance better health, education and general infrastructure. This is currently taking place at a voluntary basis.	Local authorities and communities benefit from mining projects, but this is not to a large scale. This could be achievable by 2021 however, as this is also a medium term target.	
Develop the capacity of local communities to negotiate partnership agreements.	Minerals Commission has organized some workshops for some communities. It is, however, unclear if capacities have been sufficiently built.	There is currently no requirement for local communities to have shareholding in the mining areas. Thus, partnership agreements between communities and mining companies are not provided for by law.	Currently there are no systems in place to ensure that local communities participate as partners in the mining processes. There is no indication that this could even be achieved by 2021.	
Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	Some efforts have been undertaken by the AMDC and other continental bodies in this direction.	Tanzania has effective national bodies for revenue management.	Capacity building at the national level are already in place and this could be achieved by 2021.	

Appendix 2: Scorecard for AMV Compliance in the Three Countries

Expected Activity under AMV	Score (5 is maximum score and zero is the minimum). 5 shows total alignment with AMV while zero shows total absence of alignment		
	Ghana Score	Tanzania score	Zambia Score
Improve national capacity to physically audit mineral production and exports.	3	4	3.5
Review mineral regimes in terms of optimising revenues.	4	4	4
Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws.	3	4	3
Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls	4	2.5	3
Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance & evasion (e.g. transfer pricing).	3	3	2
Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction.	1	2	3.5
Build capacity & systems to auction mineral rights where applicable.	2	2.5	2
Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds.	3	3	2

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Expected Activity under AMV	Score (5 is maximum score and zero is the minimum). 5 shows total alignment with AMV while zero shows total absence of alignment		
Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities.	3	3	2
Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation.	3	2	3
Develop the capacity of local communities to negotiate partnership agreements	1	2	1
Develop systems for strengthening capacities for national and sub-national bodies for revenue management.	4	4	3
AVERAGE SCORE	2.8	3	2.7

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ISBN 978-9966-1854-9-5



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